LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUL 1 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-71

GEORGE D. WATSON,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION II.

MORRIS LAVINE,
215 West Seventh Street
Suite 620
Los Angeles, California 90014
Tel. Area (213) MAdison 7-3241
Attorney for Petitioner.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 9-1722

TOPICAL INDEX

	Page
Jurisdiction	2
Opinions Below	2
Constitutional and Statutory Provisions Involved	3
The Facts	3
Facts Re Princess Louise, the Vessel, and Princess Louise Corporation	4
The Making of the Lease By the City Council of Los Angeles	10
City Council Made the Contract: Omission to Instruct Jury on Who Made the Contract—The City Council—Requires Reversal	13
This Was A Political Case Widely Publicized	14
False Statement to Jury Regarding Facts	15
Publicity Gag Rule	16
Questions Presented	23
Status of the Appeal	28
Statement of Facts re Lack of "Conflict of Interest" and Prejudicial Error	31
Prosecution's Theory of the Case	33
Reasons for Granting the Writ	42
It Is Important to Determine that the Defendant Was Denied Fair Trial Guaranteed By the Fourteenth Amendment To the Constitution of the United States	43

Page

A. Without Gagging the Press It Was Unequal Application of the Gag Rule to the Defendant and His Attorneys and Spokesmen and Denied Equal Protection Under the 14th Amendment U.S. Constitution 43

B. The Failure of the Court to Continue the Case Until After the Political Election Denied Appellant A Fair Trial 43

C. The Denial of A Mistrial Due To the Great Amount of Publicity Adverse to Defendant During and in the Case Which Brought on A Motion by Defense Counsel for Mistrial, Which Was Denied (R.T. 1618-1622) Was Prejudicial and Erroneous Beyond A Reasonable Doubt. (Chapman v. California, 386 U.S. 18) 43

The Court Erred In Failing to Instruct the Jury On the Necessary Elements of the Case and In the Instructions Given and Refused 47

The District Attorney Was Guilty of Prejudicial Misconduct In the Trial of the Case By Which A Fair Trial Was Denied. The Opening Statement of the District Attorney Accusing the Defendant of Having A Piece of the Deal and Which It Was Later Admitted Was Untrue and Unproved Was So Prejudicial As to Deny Fair Trial Guaranteed By the Due Process Clause of the Fourteenth Amendment To the Constitution of the United States 49

Page

Sections 1090 and 1097 of the Government Code Are Unconstitutional Under the Due Process Clause of the 14th Amendment, U.S. Constitution in Failing To Define the Words "Financially Interested" As the Statute Was Amended in 1963 Stats. 1963, 2172, p. 4559, Sec. 1). The Words Are Words of Limitation 51

In Re Misconduct of Defense Attorney and Surrender of Substantial Rights of Defendant In the Trial of this Action 54

To Provide In A Statute That A Person Who Is Convicted of a Misdemeanor Carrying A Fine of $1,000 Can Be Barred From Public Office Forever Is Cruel and Unusual Punishment In Violation of the Eighth Amendment To the Constitution of the United States and Is In Excess of the Power and Jurisdiction of the Legislature and the Court 56

5. Disqualification to Hold and Enjoy Any Office of Honor, Trust Or Profit in This State. Section 1097) 56

Section 13520 Denies the Equal Protection of the Laws Guaranteed By the Fourteenth Amendment To the Constitution of the United States and Singles Out Persons Arrested for Crime for Wider Treatment and Punishes Them Without Trial Or Conviction of Crimes, Solely Because They Are Arrested and Accused Is Re-

Page

quired In Order To Put Up Bail for Their Right to Liberty on Bail. Also It Imposes A Penalty Only On Persons Who Are Arrested or Convicted of Crime and Not Upon the Taxpayers Generally To Provide for Alleged "Penalty Assessment" To Train Peace Officers 60

Prayer 62

TABLE OF CASES AND AUTHORITIES CITED

Cases

Adler v. Board of Education, 342 U.S. 485, 86 L. ed. 517, 72 S. Ct. 380, 27 ALR 2d 472 57

Alcorta v. Texas, 355 U.S. 28, 2 L. ed. 9 50

Ashton v. Kentucky, 384 U.S. 195 53

Baystrom v. Herold, 383 U.S. 107, 111 62

Berger v. U.S., 295 U.S. 78, 89 L. ed. 1314 ..... 37, 50

Brown v. Bozeman, 138 Cal. App. 133 13

Burton v. U.S., 391 U.S. 123, 20 L. ed. (2) 476 32

Cantwell v. Connecticut, 310 U.S. 296, 84 L. ed. 1213 53

Carrington v. [illegible]al, 380 U.S. 89, 93 62

City Improvement Co. v. Broderick, 125 Cal. 139 13

Cole v. Arkansas, 333 U.S. 199, 201, 92 L. ed. 647 ..... 7, 10, 59

Connally v. General Construction Co., 289 U.S. 385, 391, 70 L. ed. 322 53

Cox v. Louisiana, 379 U.S. 536 53

Cramp v. Board of Public Instruction, 368 U.S. 278, 7 L. ed. 2d 285, 82 S. Ct. 275 57

Page

Delaney v. U.S., 199 F. 2d 107, 115 44
DeJonge v. Oregon, 299 U.S. 353, 81 L. ed. 278 ..... 7, 59
Edwards v. So. Carolina, 372 U.S. 229 53
Fountain v. City of Sacramento, 1 Cal. App. 461 11
Estes v. Texas, 14 L. ed. 2d 543, 550 ..... 41, 46, 47, 54, 55, 56
Fitts v. Superior Court 6 Cal. 2d 230 58
Foxen v. City of Santa Barbara, 166 Cal. 77 13
Gamewell F. A. T. Co. v. Los Angeles, 45 Cal. App. 149 13
Griffin v. Illinois, 35 U.S. 12 62
In re Murchison, 349 U.S. 133, 99 L. ed. 942 46
In re Rothrock, 14 Cal. (2) 34, 38 55
Irwin v. Dowd, 366 U.S. 717 55
Jones v. Southern Pacific Co., 34 Cal. App. 629 12
La France Fire Engine Co. v. Syracuse, 33 Misc. Rep. 516 11
Lanzetta v. New Jersey, 306 U.S. 451, 83 L. ed. 888 53
Henry Cowell Lime & Cement Co. v. Williams, 182 Cal. 691 13
Louisvile Gas Co. v. Virginia, 253 U.S. 412, 415 62
Marshall v. U.S., 360 U.S. 310, 3 L. ed. 2d 1250 46
Matthews v. Town of Livermore, 156 Cal. 294 12
Mooney v. Holohan, 294 U.S. 103, 79 L. ed. 791 33
Miller v. McKinnon, 20 Cal. (2) 88 ..... 12, 30, 37, 38, 47, 54
Murphy v. Napa County, 20 Cal. 497 ..... 10, 12
Napue v. Illinois, 360 U.S. 264, 3 L. ed. 2d 1217 37
Nicolson Pavement Co. v. Painter, 35 Cal. 699 11
Offutt v. U.S., 348 U.S. 11, 14 ..... 41, 46
Peck-Williamson et al Co. v. Steen School Tp., 30 Ind. App. 637 11

Page

People v. Atwood, 223 Cal. App. 2d 316 47
People v. Baker, 42 Cal. 2d 550 47
People v. Beale, 116 Cal. App. 2d 475 50
People v. Bevins, 54 Cal. 2d 71 47
People v. Burns, 88 Cal. App. 2d 867 ..... 47, 48
People v. Cane, 27 Cal. 2d 693 48
People v. Carmen, 36 Cal. 2d 768 ..... 48, 54
People v. Carnine, 31 Cal. 2d 384 48
People v. Darby, 114 Cal. App. 2d 412 ..... 20, 51
People v. Darrow, 212 Cal. 167 ..... 14, 48
People v. Davis, 48 Cal. (2) 241, 256 ..... 37, 55
People v. Davis, 147 Cal. 347 ..... 19, 23
People v. Digiacomo, 193 Cal. App. 2d 688 47
People v. Elliott, 115 Cal. App. 2d 410, 416 58
People v. Garcia, 250 Cal. App. 2d 15 47
People v. Harby, 51 Cal. App. 2d 759, 767, 770 58
People v. Heddens, 12 Cal. App. 2d 245 14
People v. Holt, 25 Cal. 2d 59 ..... 14, 48
People v. Ibarra, 60 Cal. (2) 460 ..... 36, 54
People v. Jeter, 60 Cal. 2d 671 48
People v. Lynch, 60 Cal. App. 2d 133, 141 50
People v. Lyons, 47 Cal. 2d 311, 318 50
People v. Manzo, 9 Cal. 2d 594 47
People v. Marsh, 58 Cal. 2d 732 37
People v. Modesto, 59 Cal. (2) 722 54
People v. Morse, 60 Cal. 2d 631 ..... 14, 47
People v. Neil Cay, 37 Cal. (2) 792 54
People v. Putnam, 20 Cal. 2d 885 48
People v. Putnam, 20 Cal. 2d 889, 890 ..... 14, 47
People v. Rogers, 56 Cal. (2) 300 55

Page

People v. Schofield, 203 Cal. 703 47
People v. Talley, 111 Cal. App. 2d 650, 677 50
People v. Warren, 16 Cal. 2d 103 ..... 14, 47
People v. Wright, 167 Cal. 1 ..... 14, 48
Reams v. Cooley, 171 Cal. 154 ..... 10, 12
Re Gault, 387 U.S. 1 57
Re Oliver, 333 U.S. 257, 273, post. 682, 694, 68 S. Ct. 499 59
Richardson v. Grant Co., 27 Fed. 495 11
Rideau v. Louisiana, 373 U.S. 723, 10 L.ed. 2d 663, 83 S. Ct. 1417 ..... 7, 46, 47, 55
Rinaldi v. Yeager, 384 U.S. 305 60
Royster Guavo Co. v. Virginia, 253 U.S. 412, 415 62
Santa Cruz R. P. Co. v. Broderick, 113 Cal. 628 13
Shaw v. San Francisco, 13 Cal. App. 547 11
Sheppard v. Maxwell, 384 U.S. 333, 16 L.ed. 2d 600, 86 S. Ct. 1507 ..... 44, 45, 47, 54, 55, 56
Slochower v. Board of High Education, 350 U.S. 551, 100 L.ed. 692, 76 S. Ct. 637 57
Smith v. Superior Court, 276 Cal. App. (2) 145 ..... 31, 43
Strauch v. San Mateo Junior College Dist., 104 Cal. 462 13
Thompson v. Louisiana, 362 U.S. 199; 4 L.ed. (2) 654 ..... 7, 10
Toreaso v. Watkins, 367 U.S. 488 57
U.S. ex rel Thompson v. Dye, 221 F. 2d 763 50
Viereck v. U.S., 318 , 236, 87 L.ed. 734 50
Wieman v. Updegraff, 344 U.S. 57
Winters v. New York, 333 U.S. 507 53
Zottman v. San Francisco, 20 Cal. 96 ..... 10, 12

Authorities

Page

Government Code

Section 1090 ..... 26, 27, 30, 51. 52
Section 1097 ..... 26, 27, 51, 52, 58
Section 3060 58
Section 3061 58
Section 3062 58
Section 3063 58
Section 3064 58
Section 3065 58
Section 3066 58
Section 3067 58
Section 3068 58
Section 3069 58
Section 3070 58
Section 3072 58

Penal Code

Section 15 56
Section 20 26
Section 118.1 26
Section 758 58
Section 1093 14
Section 1385 29
Section 13520 ..... 27, 60
Section 13521 60
Section 13522 60
Section 13523 60

IN THE

Supreme Court of the United States

October Term, 1971

No.....

GEORGE D. WATSON,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION II.

To the Honorable Warren Burger, Chief Justice, and To the Honorable Associate Justices of the United States Supreme Court:

YOUR PETITIONER, GEORGE D. WATSON, respectfully petitions this Honorable Court for a writ of certiorari directed to the Court of Appeal, Second Appellate District, Division II of the State of California to review and reverse a judgment of conviction for alleged "conflict of interest" in the *making* of a

contract by the City of Los Angeles for the lease of a harbor facility to the Princess Louise, a ship restaurant. The contract was made by the City Council of which Watson was not a member. Petitioner contends he was the object of highly unfavorable newspaper publicity against which he was restrained by the court from replying and that his indictment and conviction resulting therefrom is void and in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments U.S. Constitution. This contention was raised in the Court of Appeal, Second Appellate District, State of California and in the Supreme Court of California and denied by both. (See petition for hearing in Supreme Court of California denied April 1, 1971.)

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1257 U.S. Code.

The Court of Appeal, Second Appellate District Division II rendered its decision February 4, 1971. A petition for hearing was duly filed in that court and denied by the Supreme Court April 1, 1971. This petition for hearing is being filed within 90 days thereafter, and within the time allowed by law.

OPINIONS BELOW

The Opinion of the Court of Appeal, Second Appellate District, State of California, is attached herein as Appendix "A". No opinion was rendered by the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The First Amendment (Free Press and Fair Trial Rights and Freedom of Speech.)

The Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments Are Involved.

The Sixth Amendment.

The Provisions of the Eighth Amendment.

The Privileges and Immunities of Citizens of the United States.

Los Angeles City Charter Provision Section 140E.

THE FACTS

Los Angeles was involved in one of the hottest political elections in 1969. The campaign began long before. Mayor Sam Yorty, white, was running for reelection against Tom Bradley, popular negro city councilman. The powerful Los Angeles Times, the only morning daily newspaper in the area was backing Tom Bradley. The Times had been feuding with Mayor Yorty from the time he first took office and this looked like an opportunity to "dump Yorty." Seeking something to discredit the mayor, it lit on his appointees to the Harbor Commission for criticism and criminal prosecution.

George Watson was one of Mayor Yorty's Commissioners. Watson had succeeded in getting an old boat

transferred to the Los Angeles Harbor for a restaurant with profit to the city.

FACTS RE PRINCESS LOUISE, THE VESSEL, AND PRINCESS LOUISE CORPORATION

While on vacation with his wife, George Watson, a member of the Harbor Commission, saw an old boat at Vancouver, B.C. They thought it would be a great thing for L.A. Harbor and on return, started a movement in that direction. Ultimately upon complete investigation and recommendation of various agencies and its own industry and transportation committee the City Council made the 25-year lease.

The Princess Louise was the old passenger steamship that lay at anchor in the harbor of Vancouver, B.C. Title was held by a corporation wherein Leonard O'Dell and his wife owne dall the stock. It was purchased by Princess Louise Corporation, a California corporation. The purchase price was $100,000, payable $35,000 in cash and $65,000 by a promissory note of Princess Louise Corporation. (R.T. 619, lines 15-26; R.T. 620, lines 6-8)

The Princess Louise was simultaneously sold by Princess Louise Corporation to Small Business Development Co. in a "sale and leaseback" transaction. The Small Business Development Co. took title to the vessel and leased it back to Princess Louise Corporation for 25 years. The Small Business Development Corportion then borrowed $340,000 from the Small Busi-

ness Adminstration, giving a mortgage on the vessel, an assignment of the lease to Princess Louise and later an assignment of the lease of the City of Los Angeles to Princess Louise Corporation, all as security therefor. The documents involved in this transfer are contained in Exhibit 12.

The avails of the loan were used by the Small Business Development Co. in putting together the intricate deal whereby the Princess Louise was purchased, towed to Los Angeles, fitted up as a ship cafe; for fixtures, equipment, supplies, working capital, services, financing charges and other expenses, including a liquor license. Princess Louise Corporation negotiated a lease to Berth 236 at the Los Angeles Harbor from the City of Los Angeles, which lease was, as stated above, assigned as additional security to Small Business Administhation. The Princess Louise Restaurant in the vessel began operations on September 15, 1966. It was successful and has paid its percentage rental to the City of Los Angeles in monthly installments thereafter. The 25 years lease with the City was *made* by the City Council pursuant to the mode set forth in Sec. 140E of the Los Angeles City Charter (R.T. 1985). The percentage rental paid to the City of Los Angeles by Princess Louise Corporation from its opening date of September 15, 1966 to October 2, 1968 amounted to $84,281.62 (R.T. 772, lines 7-23)

The prosecution's own witness, Mr. Sutton, testified that appellant never owned any interest in the Prin-

cess Louise (the vessel); the Princess Louise Corporation or the Small Business Development Co. He never owned a share of stock in any of them. He has never received anything of value, either directly or indirectly, from any of them. (R.T. 735, line 3 through R.T. 736, line 10) He has never had any *financial interest* in the project or in any part of it. He has never preferred that the lease made by the City Council of the City of Los Angeles with the Princess Louise be executed more than he desired the public good be served.

Contrary to the bad newspaper publicity all logical inferences, plus the presumption of innocence, compel the logical deduction that appellant was a faithful public servant and put the best interest of the City above all private consideration.

Analysis of the mode in which a 25 year lease with the City of Los Angeles has to be made by the City Council eliminates Mr. Watson, not on the City Council, from any "conflict of interest."

Nevertheless the Times and the prosecutor made it appear that Watson and the Harbor Commission "*made*" the lease, The prosecutor falsely stated Watson had a piece of the deal, later withdrawing it.

Thus while a "free press" massacred Watson, in the public eye, a trial judge duty bound to see justice done, was holding that Watson was getting a fair trial in Los Angeles County. But another judge hearing the evidence of bad publicity, transferred the case of De-

veloper Smith referred to in Count III to San Francisco where Smith was acquitted.

Watson's wife owned a corporation known as Easco. She was the sole stockholder. She made a loan of $10,400 to her friend Chas. Sutton to buy a liquor license long before the Princess Louise was moved to Los Angeles Harbor. Sutton later sold his liquor license to the Princess Louise and repaid Mrs. Watson his loan from the sale. It was this loan that the prosecution later contended created a creditor-debtor relation between Watson, after it abandoned its first contention that Watson "had a piece of the deal."

Thus Watson stands convicted of a crime not made out and in violation of due process of law guaranteed by the Fourteenth Amendment U.S. Constitution.

DeJonge v. Oregon, 299 U.S. 353; 81 L. Ed. 278.

Thompson v. Louisiana, 362 U.S. 199; 4 L. Ed. (2) 654.

Rideau v. Louisiana, 373 U.S. 723, 727 10 L. Ed. (2) 663, 665.

Cole v. Arkansas 333 U.S. 199

The charge against George Watson grows out of his position as Harbor Commissioner over a lease to which the City Council of the City of Los Angeles granted to the Princess Louise Corporation for Berth 236 at the Los Angeles Harbor where the Princess Louise Corporation later opened a restaurant. Mr.

[1]The primary election April 1, 1969 resulted in heavy lead for Bradley (298,336 for Bradley, 186,174 for Yorty.) In the final election Yorty won May 27, 1969 (394,364 for Bradley and 449,572 for Yorty.)

Watson was not on the City Council which made the lease, nor in any way connected with the Princess Louise Corporation.

The indictment charged Mr. Watson in the following language.

> "The said GEORGE D. WATSON is accused by the Grand Jury of the County of Los Angeles, State of California, by this indictment, of the Crime of CONFLICT OF INTEREST in Violation of Sections 1090 and 1097, Government Code of California, a felony, committed prior to the finding of this indictment, and as follows:
>
> "That on or about the 10th day of June 1966, at and in the County of Los Angeles, State of California, the said defendant,
>
> GEORGE D. WATSON
>
> was willfully, unlawfully, knowingly and feloniously financially interested in a contract *made* on June 10, 1966, by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, with the Princess Louise Corporation, the said defendant, GEORGE D. WATSON, being then and there and at all times herein mentioned a city officer and member of the Board of Harbor Commissioners of the City of Los Angeles, State of California."

ERRONEOUS OMISSION FROM INDICTMENT

The indictment fails to allege that the contract was made by the City Council of the City of Los Angeles, of which Mr. Watson was not a member and therefore did not *make* the lease. Only the City Council could make the lease for 25 years by City Charter Sec. 140E.

The prosecution's additional theory of the case was that a "debtor-creditor" relationship existed between Mr. Watson and Princess Louise Corporation. No such relationship existed and the evidence failed to show it existed between the Princess Louise Corporation and Mr. Watson. At no time did the evidence show that Mr. Watson had any *financial interest* in the *contract between the Princess Louise Corporation* and the City of Los Angeles, which was approved by the City Council of the City of Los Angeles. This wrongful assumption as to who *made* the lease was persisted in throughout the trial by the prosecution and court and on appeal in the State Court and in the press. We endeavoured unsuccessfully to call this error to the attention of the Court of Appeal. But it refused to correct its erroneous opinion.

Appellant's conviction is a massive example of a miscarriage of justice through bad publicity.

Princess Louise Corporation applied for a lease on berth 236 at the Los Angeles Harbor from the City of Los Angeles. This was in January, 1966. The lease was negotiated and approved June 10, 1966 by the City Council with Princess Louise. The lease

was executed July 8, 1966. There is not one scintilla of evidence that George Watson made this lease which was made by the L. A. City Council or that he was "financially interested" in the lease-contract.

His conviction on a charge not made violates due process. *Thompson v. Louisiana* 362 U.S. 199; 4 L. Ed (2) 654. *Cole v. Arkansas* 333 U.S. 199; 92 L. Ed. 647.

THE MAKING OF THE LEASE BY THE CITY COUNCIL OF LOS ANGELES

The 25-year lease was submitted to the Industry and Transportation Committee of the City Council after being recommended by the Board of Harbor Commissioners and that on April 29, 1966 the City Clerk of the City of Los Angeles, in a letter regarding the action taken by the City Council, addressed to the Harbor Commission (with Lease), and in reference to the execution of the Lease, said: "At the meeting of the Council held April 28, 1966, the attached report of the Industry and Transportation Committee was adopted. /s/ Walter C. Thiel, City Clerk."

In *Reams v. Cooley,* 171 Cal. 154, the Court said: "Where the statute prescribes the only mode by which the power to contract shall be exercised the *mode* is the *measure* of the power. A contract made otherwise than as so prescribed is not binding or obligatory as a contract and the doctrine of implied liability has no application in such cases. (*Zottman v. San Francisco,* 20 Cal. 96; *Murphy v. Napa County,* 20

Cal. 497; *Nicolson Pavement Co. v. Painter,* 35 Cal. 699; *Fountain v. City of Sacramento,* 1 Cal. App. 461; *Shaw v. San Francisco,* 13 Cal. App. 547; *Richardson v. Grant Co.,* 27 Fed. 495; *Peck-Williamson et al Co. v. Steen School Tp., 30* Ind. App. 637 [66 N.E. 909]; *La France Fire Engine Co. v. Syracuse,* 33 Misc. Rep. 516 [68 N.Y. Supp. 894].)"

The mode prescribed by the City Charter of the City of Los Angeles in Section 140E is as follows: "All such franchises, permits and leases shall be granted subject to such terms and conditions and such rental or compensation as may be prescribed therein and to the limitations, conditions, restrictions and reservations in his charter contained. Every such franchise, permit or lease for a definite period of time shall be made by order. Every order granting any such franchise, permit or lease for a period of five years or less shall be published once in the same manner as ordinances of said city, and shall take effect upon such publication. Every order granting any such franchise, permit or lease for a period of more than five years shall, before the same shall become effective, be submitted to the Council for its approval or disapproval. Action must be taken thereon by the Council within thirty days after such order shall have been submitted to it. If the Council shall approve the same such order shall thereupon be published once in the same manner as ordinances of said city; or, if the Council shall fail to disapprove any such order within said thirty days, such order shall thereupon

be published once in the same manner as ordinances of said city. Every such order, when published, shall, before the same becomes effective, be subject to the referendum provisions of this charter relating to ordinances."

Under these facts we respectfully submit that the Harbor Comimssion could not and did not make the lease. It could only *recommend* it. It was the City Council that made the lease, and Watson could not be guilty.

In *Miller v. McKinnon,* 20 Cal. (2) 88, the Court said: "Certain general principles have become well established with respect to municipal contracts, and a brief statement of these principles will serve to narrow the field of our inquiry here. The most important one is that contracts wholly beyond the powers of a municipality are void. They cannot be ratified; no estoppel to deny their validity can be invoked against the municipality; and ordinarily no recovery in *quasi* contract can be had for work performed under them. It is also settled that the mode of contracting, as prescribed by the municipal charter, is the measure of the power to contract; and a contract made in disregard of the prescribed mode is unenforceable." (Citing cases) (See(also, *Reams v. Cooley,* 171 Cal. 150 [152 Pac. 293, Ann. Cas. 1917A, 1260]; *Zottman v. San Francisco,* 20 Cal. 96 [81 Am. Dec. 96]; *Murphy v. Napa County,* 20 Cal. 497; *Jones v. Southern Pacific Co.,* 34 Cal. App. 629 [168 Pac. 586]; *Matthews v. Town of Livermore,* 156 Cal. 294 [104 Pac. 303];

Foxen v. City of Santa Barbara, 166 Cal. 77 [134 Pac. 1142]; *Santa Cruz R. P. Co. v. Broderick,* 113 628 [45 Pac. 863]; *City Improvement Co. v. Broderick,* 125 Cal. 139 [57 Pac. 776]; *Gamewell F. A. T. Co. v. Los Angeles,* 45 Cal. App. 149 [187 Pac. 163]; *Strauch v. San Mateo Junior College Dist.,* 104 Cal. 462 [286 Pac. 173]; *Brown v. Bozeman,* 138 Cal. App. 133 [32 P. (2d) 168); *Henry Cowell Lime & Cement Co. v. Williams,* 182 Cal. 691 [189 Pac. 838].

CITY COUNCIL MADE THE CONTRACT: OMISSION TO INSTRUCT JURY ON WHO MADE THE CONTRACT — THE CITY COUNCIL — REQUIRES REVERSAL.

The court, in instructing the jury, did not read the specific charge as contained in the indictment.

It did not instruct the jury as to who *made* the contract, to-wit the City Council—nor the law applicable only to the maker of the contract, nor the charter provision of the Los Angeles City Charter what leases for more than 5 years must be made by the City Council. Nor did the court give the jury any proper instruction on what constitutes a "debtor-creditor" relationship which was the prosecution's theory in the case. Nor what constituted the difference in California in relationship between a corporation and an individual.

Without the specific language of the indictment being read to the jury and with the specific instruction that told the jury who made the contract as a

matter of law—that it was the City Council in this case—and what constituted the debter-creditor relationship as a matter of law, and the legal difference between a corporation and an individual, so that the jury could decide whether George Watson was "financially interested" in the contract made by the City Council between the City of Los Angeles and the Princess Louise *Corporation,* the jury was without guide or rudder in the case. (Section 1093, Penal Code; *People v. Morse,* 60 Cal. 2d 631; *People v. Heddens,* 12 Cal. App. 2d 245; *People v. Warren,* 16 Cal. 2d 103; *People v. Wright,* 167 Cal. 1; *People v. Darrow,* 212 Cal. 167; *People v. Putnam,* 20 Cal. 2d 889, 890; *People v. Holt,* 25 Cal. 2d 59.) A proper instruction as who made the 25 year contract—the City Council—had it been followed and bad publicity disregarded, would have resulted in petitioner's acquittal.

THIS WAS A POLITICAL CASE WIDELY PUBLICIZED.

Mr. Watson was caught in the crossfire of a heated political election for mayoralty between Mayor Sam Yorty and Councilman Thomas Bradley. The Times newspaper, which had been feuding with Mayor Yorty, was opposing Yorty in the election and was attacking appointees appointed by Mr. Yorty in a vigorous fashion, blasting away at him and his administration in its newspaper, publicizing very heavily the Watson trial and the statements made by the prosecutor and the testimony of various witnesses in the case.

FALSE STATEMENT TO JURY REGARDING FACTS.

At the outset of the prosecutor's opening statement Deputy District Attorney Montagna represented that he was going to prove through the testimony of another Harbor Commissioner that George Watson had a percentage of the Princess Louise deal, how he was to get a percentage, how he had an interest in it. He was also going to prove that the only money and only property invested by Sutton in the Princess Louise was the money that came from Watson. (R.T. 402, 403) This was proved in the trial to be patently false and in the closing agrument to the jury Deputy District Attorney Imerman, who was jointly trying the case with Depu ty Montagna, said "And consistant with traditional notions of fair play and substantial justice I would like to tell you this about the Princess Louise and I think it has somewhat gone from me by Mr. Montagna's remarks to you but I would say it would be unfair for you to conclude from this evidence that Mr. Watson had a piece of that boat. And by that language I mean that he was a stockholder, a hidden stockholder, anything of that nature. That would be unfair to Mr. Watson because there is no evidence in this case to show that he is a stockholder in that boat. I think it would be unfair of you if you drew any adverse inferences or conclusions insofar as the chacter of Mr. Sutton is concerned." (R.T. 214, Lines 2-4)[1]

[1]This confession by the prosecution should have resulted in a judgment of acquittal. (See 1118.1 Penal Code)

Nevertheless, the damage of the opening statement had been done, the newspapers were privileged to blast away as fair press comment and privileged and the damage could not be erased any more than you can remove the hole in the wall that had been mistakenly driven into it by a nail that is removed.

PUBLICITY GAG RULE.

At the outset of the arraignment the judge presiding in the Master Calendar court without notice or an opportunity to be heard made the following order putting a gag on defendant and his counsel in relation to press comments. This violated due process guaranteed by the 14th Amendment U.S. Constitution. (In re Gault 387 U.S. 1; In re Winship 397 U.S. 358, 368, footnote 375) and defendants First Amendment rights.

"The Court advises the Defendant of his constitutional rights.

"It appearing to the Court that the within case is one of considerable public interest and may result in substantial pulicity, and that there is a reasonable likelihood that dissemination by any means of public communication of extra-judicial statements relating to this case may interfere with a fair trial or otherwise prejudice the due administration of justice, on its own motion the Court makes the following order:

"No party nor attorney herein nor judicial employee nor law enforcement agency or officer associated with this case, nor any agent, employee, independent contractor, business associate or rep-

resentative of such persons or entities, associated with this case, nor any witness having appeared herein shall release or authorize the release of any extra-judicial statement relating to this case, for dissemination by any means of public communication, excepting substantive matters as follows:

"1. Factual statements of the Defendant's name, age, residence, occupation and family status.

"2. The circumstances of arrest, namely, the time and place of arrest, and the identity of the investigating and arresting officers and agencies and the length of he investigation.

"3. The nature, substance and text of the charge including a brief description of the offenses charged.

"4. Quotes from or reference without comment to public records of the Court in the case, and to other public records and communications heretofore disseminated to the public.

"5. The scheduling and result of any stage in the judicial proceedings.

"6. A request for assistance in obtaining evidence.

"7. A statement without additional comment that the Defendant denies the charges against him.

"8. The identities of attorneys herein.

"This order shall be in force until the disposition of the within case, or further order of the Court, whichever is the sooner. Plea and or further proceedings continued to February 15, 1968 at 9:00 A.M. The Court orders the Court Reporter to prepare an original and three copies of above order. Remanded." (C.T. 6)

This order unconstitutionally put a gag on the defendant and his attorneys and agents to answer the blasts that were appearing in the paper in the mayoralty election campaign and deprived the defendant and his counsel of rights guaranteed by the First and Fifth and 14th Amendments to the Constitution of the United States guaranteeing due process and equal protection of the laws and freedom of speech and press guaranteed by the First Amendment.

No gag was put on the newspaper, however. Thus while the newspaper repeatedly commented, Watson and his attorney had to remain silent and not reply. This was not equal justice under the law nor freedom of speech or press as far as Watson was concerned.

Watson's attorney failed to move for a change of venue, but developer Smith named in Count II later did so and his case was transfered to San Francisco 276 Cal. App. (2) 145 where on fair trial he was acquitted.

During the course of the trial, defendant made a motion for mistrial on the grounds that he could not get a fair trial due to the publicity. (C.T. 24) Outside the hearing of the jury, defendant requested a recess to present evidence of undue publicity. This was also denied. Copies of newspapers were marked for identification, particularly the Los Angeles Times dated October 17, 1968. No admonition was given to the jury at the end of the trial to disregard either the opening statement of Mr. Montagna or the publicity of the newspaper which was adverse to the defendant.

Although gagging the defendant and his counsel and possibly the prosecution has become a practice in subsequent trials (Sirhan Sirhan and the Tate Murder cases), nevertheless then District Attorney Younger is quoted in the newspapers as saying he resented and resisted a similar order made in the *Tate* case, also in the case of *People v. Lloyd Davis* (a judge charged with assult with a deadly weapon). We join the former District Attorney in holding that it denied both the defense and the prosecutoin rights guaranteed under the First Amendment to the Constitution of the United States guaranteeing freedom of speech and freedom of the press and the Fifth Amendment rights under the Constitution of the United States to fair trial both to the presecution and to the defense. The now Attorney-General should give and concede the same rights to the defendant in this case. No notice or hearing was held by the trial judge prior to this gag order, thus further denying due process guaranteed by the 14th amendment. U.S. Constitution; (In re Gault 387 U.S. 1.) Thus this case presents important rulings of constitutional and statutory law which this court should hear and decide to establish uniformity of decision and important questions of law. (*People v. Davis,* 147 Cal. 347.)[2]

During the trial of the case it was apparent that the defendant's counsel did not clearly understand the relationship between the Harbor Commission which merely has the power to recommend a lease of 25 years

[2]The gag rule has been put on other important pending State cases, notably *People v. Angela Davis, et al.*

to the City Council but that the lease has to be *made* by the City Council nor did he understand the distinction between a corporation and an individual. He lead his client to make answers to his own leading questions which were not the true facts. Thus, he led Mr. Watson to answer that he (Watson) made the loan of $10,400 to Sutton when Watson merely carried over the check which Watson's wife's corporation had issued. It might just as well come in the mail, this would not have made the mail carrier the lender. Watson at no time had any financial interest, directly or remotely or otherwise, in the loan made by Watson's wife's solely owned corporation to Sutton and at no time had any conflict of interest in his position as Harbor Commissioner in voting to recommend the highly beneficial and profitable lease with the City of Los Angeles. Thus, Mr. Watson never had any interest, direct or indirect, in the contract made by the City Council between the Princess Louise Corporation and the City of Angeles.

Mrs. Watson's corporation which loaned Sutton $10,400 never had any interest in the Princess Louise Corporation or the lease either and had never done any business with it. The legislature has never made this kind of transaction a violation of law. This case is distinguished from the transaction in the *Darby* case where the member of the board was making the contract. The court apparently based its instructions on an earlier case of *People v. Darby,* 114 Cal. App. 2d 412, before the Government Code was amended to add the

words "financial interest" in the section, but followed very largely instructions given in the *Darby* case not comparable on the facts. The court, however, omitted what we believe was the essential instruction or nitty gritty of the *Darby* case, 114 Cal. App. 2d 412, 425, where the appellant court expressed itself as follows in defining when a person is interested, in which the court said: "If the member (in that case the school board member) is for any reason placed in such position that he prefers the execution of a proposed contract more than he desired the public good to be served, then he is interested." This, of course omits the later limitation by the Legislature that an accused must have a "*financial interest.*" Watson was never placed in such a position. He was not on the City Council which made the contract.

At no time does the evidence show that Mr. Watson was on the City Council which made the contract or that for any reason he was placed in such position that he preferred the execution of the contract between the City of Los Angeles by its council and the Princess Louise Corporation more than he desired the public good to be served, nor that he had a "*financial interest*" in the contract between the City and the Princess Louise. On the contrary, he desired and served the public good so faithfully in this entire matter that the city will profit to the extent of $1,250,000 from the contract which the City Council *made*.

The defendant was charged in the indictment in Count I with conflict of interest and in Count II with

conflict of interest and in a third count with bribery involving an entirely separate and unrelated transaction. The court denied motions for separate trials but at the conclusion of the trial said he knew that the jury was confused, as was perhaps even the prosecutor, and he granted a new trial on the bribery charge and dismissed it. Nevertheless, much more than half of the trial evidence related to the widely publicized bribery charge and obviously influenced the jury, even in the opinion of the court. Likewise, the prejudice arising therein could not be and was not erased.

During the trial Mr. Sutton, who was operating the restaurant in the Princess Louise, could not find and thought he had lost a promissory note made out to Sutton by EASCO, Inc., which demonstrated that the loan which he received was from EASCO, Inc. and not from George Watson. Since the trial, in going through his income tax papers for taxes, he found the note and it was offered to the Court for augmentation of the record and demonstrates that the loan was made by EASCO, Inc., and not by George Watson and thus wholly defeats the earlier contention by the prosecution and the possible inference that there wasn't ever really a note when it wasn't produced in the trial. The California Courts refused its introduction offered under *Brady v. Maryland.*

At the conclusion of the case the court fined Mr. Watson $1,000 and $250 penalty assessment. The maximum fine for the alleged offense is $1,000. Neither statutory law nor the Constitution of the State of Cali-

fornia provides a "penalty assessment" as a penalty for a crime. He also pronounced judgment barring appellant Watson from forever holding public office without any accusation in the pleading on which such judgment can be based.

It is important that a hearing be granted to establish uniformity of decision and settle important question of constitutional law, correct errors in fact on law in the opinion of the court of appeal. (*People v. Davis* 147 Cal. 347) and establish rights and duties of the Courts and litigants in highly publicized cases.

QUESTIONS PRESENTED

1. Whether the trial court had jurisdiction to put into effect, without notice or an opportunity to be heard, a "gag rule" on defendant or his attorneys and others (see pp. 16 and 17 for the rule), but not upon the press, without violating the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

1(a). Whether such a rule, inherently and as construed and applied in this case, violates the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

1(b). Whether such a rule of court gagging the parties but not the press from commenting on the case before and during the trial violates the Equal Protections clause of the Fourteenth Amendment to the Constitution of the United States. Whether the accused

can be gagged and not reply to attacks in the press when the press is not equally gagged or restrained.

1(c). Whether bad publicity inspired by a newspaper opposed to the petitioner resulted in unjust conviction in violation of fair trial guaranteed by the Fourteenth Amendment to the Constitution of the United States.

1(d). Whether the gag rule can be placed on a defendant at the time of arraignment without notice or hearing and an opportunity to determine the rights of all parties to a fair trial and to free speech and free press guaranteed by the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

1(e). Whether gagging the defendant and his attorneys and agents denied him or his attorney an opportunity to answer false charges made by the press and denied petitioner a fair trial guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States due to the highly bitter and adverse publicity in the politically tainted mayoralty election directing involving attacks on the defendant in the press.

1(f). Whether the attorney was denied First Amendment rights in being "gagged."

2. Whether no conflict of interest existed by then Harbor Commissioner Watson. The evidence fails to show that Mr. Watson ever had any "*financial interest*" in the contract made by the City Council between the City of Los Angeles and the Princess Louise Cor-

poration. The Court of Appeal erred in holding that the evidence supported the verdict, and denied petitioner due process.

3. Whether the Court of Appeal erred in upholding the trial court which prejudicially erred in refusing a severance for trial of the misconnected counts in the indictments at the outset, thus resulting in unfair trial and denial of due process.

4. Whether the defendant was denied effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution, Defense Councel failed to bring out the provisions of the Los Angeles City Chater regarding the mode of making city contracts of 25 years which was by the City Council or set forth the lack of any personal relationship or financial interest of the defendant in the contract between Princess Louise Corporation and the City of Los Angeles or the lack of debtor-creditor relationship between Mr. Watson and the Princess Louise Corporation or between EASCO, Inc. and Princess Louise Corporation. He failed to ask for a change of venue. He failed to ask for delay of the trial until after the heated mayoralty election to avoid prejudicial publicity and he surrendered valuable defense rights entitling the defendant to an acquittal. The Court of Appeal erred in upholding that the defendant was not denied effective assistance of counsel.

5. Whether the trial court erred in failing to grant a mistrial due to the bad publicity in the case.

6. Whether the trial court erred in failing to give necessary instructions on the City Charter provision on who *makes* the contract for 25 years for the City, a fundmental issue in this case. The Court of Appeal erred in affirming the trial court's failure to give this essential instruction. The court failed to give instructions covering the laws governing the case. He also failed to give instructions covering criminal intent, as set forth in Section 20 of the Penal Code. Instruction given were incomplete and misleading.

7. Whether the indictment failed to charge a public offense where the evidence showed that the City Council made the contract. The trial court erred in failing to order judgment of acquittal as required by Section 1118.1 of the Penal Code. The instructions given by the court in the case went beyond the express provisions of Section 1090 of the Government Code, particularly in adding the words "individual or" when the law merely states "business firm." The court also erroneously added its own definition of financial interest to include the words "in a position to render actual or potential pecuniary benefit directly or indirectly tto the City officer based on the contract the business firm has received." These additions in effect amended the statute. The Court of Appeal erred in upholding the trial court's erroneous ruling.

7a. Whether the Court of Appeal denied petitioner a constitutional right of receiving into evidence a previously lost note showing the loan involved was by

EASCO, Inc. a wholly own corporation by petitioner's wife thus denying receipt of evidence to prove petitioner's innocence.

Brady v. Maryland

8. Whether Sections 1090 and 1097 of the Government Code are unconstitutionally vague and violate the 5th and 14th Amendments U.S. Constitution.

9. Whether the trial court erred in failing to grant a new trial on the issue of conflict of interest, and dismissing this count also in the interest of justice. The Court of Appeal erred in ratifying the trial court.

10. Whether the trial and appellate courts erred in barring the defendant from public office forever.

11. Whether the trial and appellate courts erred in the imposition of a penalty assessment as punishment for crime.

12. Whether Section 1090 and 1097 of the Government Code are unconstitutional in failing to define the words "financially interested." Whether the Statute violates the Fifth and 14th Amendment U.S. Constitution being unconstitutionally vague and indefinite as amended in 1963 (Stats. 1963, 2172, p. 4559, Sec. 1)

13. Whether Section 13520 denies the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and singles out persons arrested for crime and punishes without trail or conviction of crimes, solely because they

are arrested and in order to put up bail. Also, it imposes a penalty on persons wso are arrested or convicted and not upon the taxpayers generally to provide for alleged "penalty assessment."

14. Whether to provide in a statute that a person who is convicted of 'conflict of interest' can be barred from public office forever, is cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States and is in excess of the power of the Legislature.

15. Whether the Court of Appeal erred in failing to correct its factual statement and the law on rehearing as set forth in our petition for rehearing and in ratifying errors and omissions of the trial court.

STATUS OF THE APPEAL

Understanding of this appeal requires clarity as to what changes occurred from the time of the original indictment to the filing of this appeal as to the charges involved. It also involves understanding the mode in which contracts for 25 years are made by the City of Los Angeles. Sec. 104E Los Angeles City Charter governs.

The widely publicized original indictment contained three counts:

Count I charged the Haror Commissioner with "conflict of interest" involving the Princess Louise Corporation 25 year lease from the City of Los Angeles, made by the state that the City Council *made* the lease.

Count II charged "conflict of intrest" involving the San Sebastian lease from the City of Los Angeles.

Count III involved bribery, charging appellant with receiving a bribe from developer Keith Smith, (later acquitted when his trial was moved to San Francisco.) 275 aca.

Count II was dismissed on a motion under Section 995 of the Penal Code of the State of California.

Arraignment was had as to Counts I and III. (R.T. 33a) The court changed the name of Count III to Count II. (R.T. 8, lines 8-12) Thus, Count II became the name of the bribery charge and was so referred to thereafter. A long trial followed involving Count I, i.e., conflict of interest, and the newly renamed Count II, "bribery." Appellant was convicted on both counts, though they are unconnected and unrelated in facts and law. Lacking any evidence of bribery, the court granted a new trial and dismissed the bribery count "in the interest of justice."

The indictment itself was willfully misleading and inconclusive in that it assumed that the contract between the City of Los Angeles and the Princess Louise Corporation was *made* by the Harbor Commission, whereas the Haror Commission on a twenty-five year lease can only recommend the making of the lease to the city council, which city council itself must *make* the lease and only the members of the city council therefor could be liable for "conflict of interest," if there was one. This was known to the prosecutor who

argued this (R.T. 1985,) but made light of it and sloughed it off to mislead court and jury, (R.T. 1985) and later the Court of Appeal. This fed the adverse press.

While several persons and agencies recommended the project very favorably, including the Board of Harbor Commissioners, only the City Council *made* the contract in this case. The mode set out in section 140E of the City Charter for a 25 year lease is the measure of power, and sets forth who *makes* a 25 year contract. (*Miller v. McKinnon,* 20 Cal. (2) 88.)

Section 1090 of the Government Code provides that city officers "shall not be financially interested in any contract *made* by them in their official capacity."

Under the privisions for the Los Angeles city charter Sec. 140E only the Los Angeles City Council could and did make this 25 year contract with the Princess Louise Corporation.

A new trial was granted by the trial court as to Count II. Thereafter the trial court *sua sponte* dismissed Count II, the bribery charge under Section 1385 of the Peneal Code of the State of California "in the interest of justice." The court denied defendant's motion for new trial as to Count I and he received sentence thereon consisting of a fine of $1000 and a penalty assessment of $250. The defendant was also "forever barred from holding public office." (Cl. Tr. 71) Appellant contends the statute and order are unconstitutional under the due process of law clause of

the 14th Amendment to the U.S. Constitution and the Eighth Amendment to the U.S. Constitution.

The imposition of a judgment which barred the defendant from forever holding public office in the state was and is unconstitutional, being cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States. It is cruel and unusual punishment to deprive any American of his right of citizenship which such a judgment and order does, as it is one of the most valuable and precious rights of a person who is a citizen to be allowed to hold public office in the United States.

Since Mr. Watson was not a member of the City Council of Los Angeles which *made* the lease with the Princess Louise Corporation he could not be guilty of "conflict of interest" and the incomplete indictment fails to charge an offense against him.

STATEMENT OF FACTS RE LACK OF "CONFLICT OF INTEREST" AND PREJUDICIAL ERROR.

The statement of facts in this case was difficult to prepare because the most serious accusation against appellant was Count II for bribery which, as stated, has been dismissed in the interest of justice, for total lack of support and which put the facts regarding Watson in a state of confusion. The case of Developer Smith, named on Count III, later numbered Count II was transferred to San Francisco because of bad publicity in Los Angeles *Smith v. Superior Court* 276 Cal. App. (2) 145. Smith then was acquitted.

At the trial, the dramatic element involved the bribery charge with developer Smith, later acquitted, and substantial portions of the reporter's transcript of 223 pages was devoted to this subject and to arguments of counsel to the court and to the jury on it. Entirely unrelated to the Princess Louise or sloughed over and minimized was the vital explanation of how a 25 year lease is made with the City of Los Angeles under Sec. 140E of the charter. This required the City Council to *make* the contract.

Substantial attention was otherwise given to Count I, the "conflicting of interest" charge, and to the various argument, testimony and exhibits during the trial relating to the Princess Louise. Since both of these accusations were read and tried together, and widely publicized in the Times ample opportunity for confusion in the mind of the jury resulted as this diversified evidence was mixed and scattered throughout the voluminous record. Neither the jury nor the trial court nor counsel nor this Honorable Court has the power to separate in its mind each bit of evidence as it was given and properly assign it to the proper count, nor the law relating to each.

The joinder or misjoinder of these two charges was prejudicial error, denying fair trial. *Burton v. U.S.*, 391 U.S. 123, 20 L. ed. (2) 476 (Heading notes 4 and 5 in 20 L. ed. (2) 477.

PROSECUTION'S THEORY OF THE CASE

While the local newspaper blasted away against Watson as Mayor Yorty's appointee the prosecution began the erroneous theories that the Harbor Commission *made* the contract and that appellant Watson put up all the money to get the Princess Louise deal started and that Mr. Sutton was merely an indigent bartender down on the waterfront. (R.T. 400) In its opening statement it said it would prove by another Harbor Commissioner that Watson had "a piece of the deal." In its closing argument it disavowed this contention. This false statement denied due process and fair trial guaranteed by the 5th and 14th Amendments to the U.S. Constitution.

The prosecution asserted that the only money, the only property invested by Mr. Sutton in the Princess Louise was the money that went from Mr. Watson to Mr. Sutton. "The only investment monetarily by Sutton was that money which was put up by Watson." (R.T. 402, lines 9-14) This also was untrue, and known to the prosecutor to be untrue, thus denying due process of law guaranteed by the 14th Amendment U.S. Constitution. *Mooney v. Holohan* 294 U.S. 103; In re Wallace 24 Cal. (2) 933; In re Mitchell 35 Cal. (2) 869.

The evidence disclosed that Mr. Sutton was not an indigent bartender down on the waterfront, but was a competent restauranteur; that he had substantial oil interests in Texas and had real estate in Phoenix, Arizona, appraised at $100,000. He turned out to be

the key witness of the prosecution. His testimony covers 123 pages of the reporter's transcript, from 664 through 785.

Nor was the full mode which was set forth in the City Charter as to the manner of entering a 25 year lease with the City Council of the City of Los Angeles explained to court and jury. No instruction was given the jury on this subject. Watson could not be guilty of "conflict of interest" on a contract made by the City Council.

Re Sutton's financial standing, defendant's Exhibit I refers to two checks which came to Mr. and Mrs. Sutton from oil interests in their Texas oil property. In one of the checks for $24,000 Mr. Sutton's share was $12,000. This was sufficient alone to pay the loan made by EASCO, Inc. to Mr. Sutton in the sum of $10,400.

Throughout the trial the prosecution strove by all means to give the impression that the $10,400 loan was made to Mr. Sutton by appellant Mr. Watson. Leading questions by both prosecuting and defense attorney which by collaborating affirmation in the testimony of appellant clouds the matter of the Sutton loan of $10,400. Mr. Watson himself testified that he "lent" the $10,400 to Mr. Sutton. However, the documentary evidence proves that this was not so. He delivered the check of the corporation to Sutton. This delivery might just as well been by the Red Arrow Messenger Service or in the U.S. Mail. The loan was made by EASCO,

Inc. on August 5, 1965 not Watson. A photostatic copy of the check is in evidence and constitutes Exhibit 7 in this case. It was received for identification at R.T. 692 and received in evidence at R.T. 788. It was the check of EASCO, Inc., dba Engineering Associates. It was endorsed by Charles G. Sutton. Mr. Sutton testified that he purchased an on-sale liquor license with these funds. He further testified that he sold the liquor license to Princess Louise Corporation, a California corporation which he had caused to be formed; that he received no money for the liquor license at the time it was assigned to Princess Louise Corporation but that Princess Louise Corporation set up an account payable in favor of Mr. Sutton on its books to pay him for the same.

This Sutton loan of $10,400 is an essential key transaction for the proof of the prosecution's case. Apparently the prosecution became convinced of its inability to prove that the money was advanced by Mr. Watson but they strove diligently to create the impression that the $10,400 Sutton loan was made by appellant.

The documentary evidence proves this to be untrue. It was slyly, by leading questions, brought out that Mr. Watson gave Mr. Sutton the check for $10,400, which was the sum involved. This is one of the instances where a person can tell a fact but mistakenly convey a falsehood. It is true that appellant Watson "gave" the check to Mr. Sutton. But the check did not convey Watson's money.

In this transaction he was merely a messenger boy

carrying out a direction. He gave Sutton the EASCO, Inc. check. EASCO, Inc. loaned the money. The president of EASCO, Inc., who is Mrs. Watson, gave the check to appellant for delivery to Sutton. An examination of the check (Exhibit 7) is all that is necessary to prove this point.

The check was written by EASCO, Inc., dba Engineering Associates; the check was endorsed and deposited by Charles G. Sutton. Charles G. Sutton testified that he bought the liquor license with it and that he subsequently gave EASCO, Inc. a promissory note as evidence of the transaction. The evidence is undisputed that Mr. Sutton used the money to buy a liquor license and transferred the liquor license to Princess Louise Corporation for $10,400. Such was his direct testimony under question by the attorney for the prosecution, whose witness he was.

This circumstance, innocent in itself, and bad publicity are the key upon which the prosecution befuddled a jury into convicting appellant and a court in sustaining it. It is admitted that the prosecution got a giant assist from Mr. Watson's own attorney, who apparently did not originally understand the transaction or the separate relationship of corporation and individual and when later it was pointed out, considered it too unimportant to explain. Also he did not understand or urge the Charter provision, Sec. 140E requiring the City Council to make the 25 year lease. Thus appellant was denied effective assistance of counsel. *People v. Ibarra,* 60 Cal. (2) 460 and the Sixth Amendment to the U.S. Constitution.

The attitude of the prosecuting attorney can be understood on the basis of prosecutor's zeal, but the writer cannot understand the attitude and leading questions of appellant's attorney in allowing the record to stand without explaining the true facts and law applicable (*Miller v. McKinnon*) 20 Cal. (2) 58, to-wit, that the loan was made by a corporation called EASCO, Inc., dba Engineering Associates and the lease was made by the City Council. Even so, the prosecutor as attorney for the people, owed the duty to clarify and bring out the true facts. (*Berger v. U.S.*, 295 US 78; *Napue v. Illinois,* 360 US 264; *People v. Davis,* 48 Cal. 2d 246; *People v. Marsh,* 58 Cal. 2d 732)

The real errors of the prosecution was in their assumption in aid of the Times that appellant was guilty to start with and then in using their preparation and trial tactics to build up a substantiation of this previously assumed starting premise. To this end they assumed that a recommendation by the Harbor Commission was the making of the contract with the City whereas only the City Council could make the contract. City Charter Sec. 140E. *Miller v. McKinnon* 20 Cal. (2) 88, also that a loan by a corporation to Sutton, a minority stockholder, was a loan by Watson to the Princess Louise Corporation. They should have kept an open mind and sought to reveal the truth rather than to prove a false theory. We all fall into this error when we seek merely to substantiate a false theory or theories.

It takes little by way of evidence to convince a per-

son that what he wants to believe true to substantiate a theory is really true in fact. We all enlarge the importance of facts which support our theory and minimize or disregard those facts which prove to be in conflict with it. So, regardless of the provisions of Sec. 140E L.A. City Charter, requiring the City Council to make the contract of 25 years, the prosecutor erroneously assumed and argued that the recommendation of the Harbor Commission, was the making of the contract. But the mode set forth in the Charter is the measure of power. The last act required is the making of the contract, *Miller v. McKinnon* 20 Cal. (2) 68. This was done by the City Council of Los Angeles.

The prosecution changed its position radically during the trial. In the opening statement of Mr. Montagna, he presents as the evidence that he is going to prove a picture of an indigent bartender named Sutton. On page 400 of the reporter's transcript, he referred to Sutton as a man "working as a bartender, a general manager of another restaurant down in the harbor, the Ports O' Call, and he was unhappy and about to terminate and he had little financial resources. I believe the evidence will show that he was actually broke." (R.T. 400, lines 7-26) This was proved false by Sutton, called as a prosecution witness.

On page 403, later he states: "We expect to prove through the testimony of Mr. Starr and prior statements by him given under oath, that shortly after he went to the Board in September of 1965, that he was having lunch with George Watson at another restau-

rant called the Port O'Call, which sits directly across the bay from the Princess Louise.

"Now, as they were eating lunch, Watson pointed across the bay to the present site of the Princess Louise and talked about he, Watson, was going to put his ship restaurant over there, how he, George Watson, had a percentage of that, how he was to get a percentage, how he had an interest in it, and that if Starr would help him get it through the Board of Harbor Commissioners he, George Watson, would in turn give Starr a piece of what Watson had. This was in September of 1965." (R.T. 403, lines 8-22)

On page 402 (R.T.) the following appears: "The only money, we will prove this to you, the only money, the only property invested by Sutton in the Princess Louise was the money that came from Watson and went from Watson to Sutton, the liquor license, and returned to the Princess Louise. The only investment monetarily by Sutton was that money which was put up by Watson." (R.T. 402, lines 9-14) This again was contrary to Sutton's testimony as a prosecution witness.

It will be noted from the closing argument by Mr. Imerman that the prosecution had completely abandoned any theory that appellant had any interest whatsoever in the Princess Louise and that it would be unfair if the jury drew any inference that appellant had any financial interest, directly or indirectly, in the Princess Louise Corporation or in the boat. By this time the jury was obviously confused.

Charles G. Sutton was a prosecution witness. It will be recalled that Mr. Montagna, the prosecuting attorney, referred to him in his opening statement as a bartender, with little financial resources and that he was broke. The same Mr. Sutton, the witness for the prosecution, in his testimony testified that he had substantial oil interests in Midland, Texas, which he owned with his sister and wife, and that he had substantial property in Phoenix, Arizona, which he owned at the time Mr. Montagna referred to him as being broke and a bartender.

On page 764 of the transcript, two of Mr. Sutton's checks for $24,000 and $30,000 each were marked for identification and were later admitted in evidence as Defendant's Exhibit I. Mr. Sutton testified at this point that these checks represented oil royalties which he and his wife had received from the Midland, Texas, oil property and that one-half of each was owned by Mr. Sutton individually and one-half by his wife. This will indicate how diverse Mr. Montagna's statement to the jury was and his own witness's performance on the witness stand.

As to the damning testimony he was going to introduce from Mr. Starr, where in his opening statement he would show Mr. Watson's financial interest in the Princess Louise and in the Princess Louise Restaurant that was to be established at the harbor through the testimony of Mr. Starr, the record shows that Mr. Starr was never sworn as a witness and all this highly sensational testimony which he told the jury he was

going to prove at the beginning of the case was never introduced in evidence, and the jury was left with the initial but false impression that appellant owned a financial interest in the Princess Louise. To be sure, Mr. Imerman in his closing argument quotes direct opposite, but he quotes it to a jury which had been brainwashed for several days of trial with evidence on a bribery count, which was later dismissed, and evidence on Count I, where the prosecution's theory changed from assertion to denial that appellant owned any interest in the Princess Louise during the course of the trial. Small wonder that the jury were mystified and confused with this performance, and delivered false verdicts.

But this did not cure the violation of defendant's constitutional rights to a fair trial guaranteed by the due process clause of the First, Fifth and Fourteenth Amendments to the U.S. Constitution. (*Estes v. Texas,* 14 L. ed. (2) 543; *Offutt v. U.S.,* 348 U.S. 11, 16.)

We think the duty of the prosecution was to move to dismiss the charge of "conflict of interest," in the interest of justice.

The prosecution found no relationship between appellant and Princess Louise Corporation of any kind. They suggested, though erroneously, a debtor-creditor relationship between appellant and Sutton and then follows the massive fallacy in logic that because Sutton was in a debtor-creditor relationship with Princess Louise and Sutton was in a debtor-creditor relationship with the appellant, therefore appellant was in a

debtor-creditor relationship with Princess Louise. When we substitute letters for names and then substitute the words "Bank of America" and the separate depositors in that Bank, you will see that we come up with the absurdity which the prosecution and the court sought to impose upon the jury in this case. This was slyly done and was no mere inadvertence. It violated the right to Fair Trial. Bad logic is the failure of us all and constitutes a mere mistake. But this constitutes a sophistry calculated to deceive. The former is an instance of human frailty; the latter is an example of human guile. Not being able to prove any relationship between appellant and the Princess Louise Corporation, the party to the lease, they substitute Mr. Sutton in the place of the Princess Louise Corporation with the pathetic justification that he was a minority stockholder in Princess Louise Corporation and therefore that he was Princess Louise Corporation itself.

As a matter of fact, they had to stretch even farther, because there was no debtor-creditor relationship between appellant and Mr. Sutton. It is true that such a relationship was propounded by both the prosecution and appellant's own attorney by leading questions at the trial wherein appellant stated that he did lend $10,400 to Mr. Sutton, but this was a great mistake which we were able to prove by documentary evidence.

The $10,400 loan now develops to be a loan of $10,400 made by EASCO, Inc., dba Engineering Associates. This transaction, while in truth bearing no relationship

to "conflicting interest," was used by the prosecution to confuse the jury into a guilty verdict against appellant.

REASONS FOR GRANTING THE WRIT

IT IS IMPORTANT TO DETERMINE THAT THE DEFENDANT WAS DENIED FAIR TRIAL GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A. Without Gagging the Press It Was Unequal Application of the Gag Rule to the Defendant and His Attorneys and Spokesmen and Denied Equal Protection Under the 14th Amendment U.S. Constitution.

B. The Failure of the Court to Continue the Case Until After the Political Election Denied Appellant a Fair Trial.

C. The Denial of a Mistrial Due to the Great Amount of Publicity Adverse to Defendant During and in the Case Which Brought on a Motion by Defense Counsel for Mistrial, Which Was Denied (R.T. 1618-1622) Was Prejudicial and Erroneous Beyond a Reasonable Doubt. (Chapman v. California, 386 U.S. 18.)

The trial judge held, in spite of the vast publicity occurring over the fight against Mayor Yorty in the mayorality campaign, that it would not fatally infect the fairness of the trial. Nothing was done by the trial judge in this respect. In the Smith case referred to in Count II it was transferred to San Francisco *Smith v. Superior Court* 27. The jury was not locked

up. Nothing was done to postpone the trial until after the election. These were duties the judge owed appellant in performing his duty to insure appellant a fair trial. This duty is not diminished by failure of appellant's counsel to make appropriate motions.

In *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. ed 2d 600, 615, the court points out that "Furthermore the trial began two weeks before a hotly contested election at which both Chief Prosecutor Mahon and Judge Blythin were candidates for judgeships." In footnote 9 to this comment the court said that "It should be noted that short continuance would have alleviated any problem with regard to the judicial elections."

The court in *Delaney v. U.S.,* 199 F. 2d 107, 115, recognized such a duty under similar circumstances holding that "If assurance that a fair trial would necessitate that the trial of the case be postponed until after the election, then we think the law requires no less than that."

The election between Mayor Sam Yorty and Tom Bradley involved the defendant herein and one of the purposes of the publicity attacking the mayor was to attack his appointments and alleged misconduct by them in order to reflect on the mayor's conduct in office. Only a postponement until a time after the election would have served the interests of justice.

The gag placed upon the appellant and his counsel and others certainly limited their power to answer the bad publicity and was a denial of equal protection of

the laws. The court, if it was placing a gag on appellant and his counsel and associates, should equally have placed a gag on the newspaper, if that was possible, and its unfavorable reflection upon the appellant.

The misstatements of the prosecutor in this case charging that appellant had an interest in the Princess Louise Corporation raised the publication to the point of privilege of fair comment upon the judicial proceedings, although false, and that fatally infected the whole trial.

See: Hostile Sentiment or Prejudice as Ground for Continuance of Criminal Trial, 39 ALR 2d 1314.

Where there exists the difficulty of effacing prejudicial publicity from the minds of the jurors, trial courts must take strong measures to insure that the balance never weighs against the accused. This was not done here, where the press blasted away while the accused had to remain silent under the gag rule of the trial court. This denies equal application and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and since the trial judge did not fulfill his duty to protect Mr. Watson from the inherently prejudicial publicity which saturated the community and to control destructive influences in the case, the case must be reversed as it was held in *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. ed. 600, 621 (27).

Equally with our former contention is the publicity which broke out during the trial and which caused

defense counsel to move for a mistrial. (R.T. 1618) The heading "D.A. Tries to Link Him to Criminal Case—Yorty" (R.T. 1619) and the charge that the grand jury acted unfairly in indicting Watson. This was followed by an article in regard to the case on trial (R.T. 1619) consisting of two columns for five or six inches and continued on another page. The data was also repeated on television, Station KFI (R.T. 1620) and defense counsel moved for a mistrial. (R.T. 1620-1621) This was opposed by the prosecutor and denied by the court. (R.T. 1622) The request for a recess to bring in the news and TV clips and transcripts and the recordings of newspapers (R.T. 1623) was denied. (R.T. 1626) He also denied a recess. (R.T. 1626)

The court, under the circumstances above listed, should have granted a mistrial, *sua sponte*. (*Marshall v. U.S.*, 360 U.S. 310, 3 L. ed. 2d 1250)

In *Estes v. Texas,* 14 L. ed. 2d 543, 550, the court said, in quoting *In re Murchison,* 349 U.S. 133, 99 L. ed. 942, where the court said "A fair trial in a fair tribunal is the basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases but our system of law has always endeavored to prevent even the probability of unfairness. To perform this high function in the best way, justice must satisfy the appearance of justice. *Offutt v. U.S.*, 348 U.S. 11, 14. See also *Rideau v. Louisiana,* 373 U.S. 723, L. ed. 2d 663.
103)

We think the court should have transferred the case to another community removed from Los Angeles and where its local newspapers ordinarily did not reach and infect the fairness of the trial. (*Sheppard v. Maxwell,* 384 U.S. 333, 16 L. ed. 2d 600; *Estes v. Texas,* 14 L. ed. 2d 543; *Rideau v. Louisiana,* 373 U.S. 723, 10 L. ed. 2d 663). Or at least postpone the trial court after the Mayoralty election.

THE COURT ERRED IN FAILING TO INSTRUCT THE JURY ON THE NECESSARY ELEMENTS OF THE CASE AND IN THE INSTRUCTIONS GIVEN AND REFUSED.

The court gave no instruction on the City Charter provision on who *made* a 25-year contract to-wit the City Council. (Sec. 140E City Charter, *Miller v. McKinnon,* 20 Cal. (2) 88.)

It is the duty of a trial judge, whether there be a request therefor by the parties or not, to instruct the jury on all the general principles of law pertinent and necessary to a decision in the case. The court failed to instruct the jury on the City Charter provision on who makes a 25 year lease. (*People v. Morse,* 60 Cal. 2d 631; *People v. Burns,* 88 Cal. App. 2d 867; *People v. Baker,* 42 Cal. 2d 550; *People v. Bevins,* 54 Cal. 2d 71; *People v. Digiacomo,* 193, Cal. App. 2d 688; *People v. Atwood,* 223 Cal. App. 2d 316; *People v. Garcia,* 250 Cal. App. 2d 15; *People v. Putnam,* 20 Cal. 2d 885; *People v. Schofield,* 203 Cal. 703; *People v. Manzo.* 9 Cal. 2d 594; *People v. Warren,* 16 Cal. 2d

All necessary instructions to a proper consideration of the evidence and for the information of the jury in their deliberations. (*People v. Wright,* 167 Cal. 1; *People v. Darrow,* 212 Cal. 167; *People v. Putnam,* 20 Cal. 2d 889, 890; *People v. Holt,* 29 Cal. 2d 59)

A defendant is entitled to instructions on his theory of the case as disclosed by the evidence and is entitled to an instruction based on the hypothesis of the defense. (*People v. Carmen,* 36 Cal. 2d 768; *People v. Carnine,* 31 Cal. 2d 384; *People v. Burns,* 88 Cal. App. 2d 867; *People v. Cane,* 27 Cal. 2d 693; *People v. Jeter,* 60 Cal. 2d 671)

Nowhere in the instructions did the judge give any instruction to the jury on what constituted the making of a 25-year contract with the city nor what constituted a debtor-creditor relationship, such as apparently the prosecution relied on as its theory of the case and which was in fact not established as there was absolutely no debtor-creditor relationship between Princess Louise and Mr. Watson. The failure to give the essential instructions surely were fatal to the prosecution's case.

As we have heretofore said, the court is under a duty to give instructions that are necessary and relevant to the theories of the prosecution and defense of the case. To have pinpointed the instruction on the contentions of the prosecution would have required the jury to have acquitted had they followed the instruction on the subject of debtor-creditor relationship.

THE DISTRICT ATTORNEY WAS GUILTY OF PREJUDICIAL MISCONDUCT IN THE TRIAL OF THE CASE BY WHICH A FAIR TRIAL WAS DENIED. THE OPENING STATEMENT OF THE DISTRICT ATTORNEY ACCUSING THE DEFENDANT OF HAVING A PIECE OF THE DEAL AND WHICH IT WAS LATER ADMITTED WAS UNTRUE AND UNPROVED WAS SO PREJUDICIAL AS TO DENY FAIR TRIAL GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The District Attorney in his opening statement accused the defendant in effect of having a piece of the deal of the Princess Louise Corporation. He also made the statement that Sutton, who became the operator of the restaurant, was working as a bartender and that he actually was broke. (R.T. 400, 403) Both of these proved to be untrue. The first statement was admitted by the prosecution to be untrue in the prosecution's closing statement to the jury. The second was not.

On page 764 of the transcript two of Mr. Sutton's checks for $24,000 and $30,000 which he and his wife received from Midland, Texas, oil property were placed in evidence and were known to the prosecution at the outset of the case. Still, it was admitted by Deputy District Attorney Imerman in his closing argument that the statements of the Watsons having any interest in the deal was untrue. (R.T. 2141, lines 2-14)

Mr. Imerman said that "It would be unfair for

you to conclude from this evidence that Mr. Watson had a piece of that boat. And by that language I mean that he is a stockholder, hidden stockholder, anything of that nature. That would be unfair to Mr. Watson because there is no evidence in this case to show that he is a stockholder in that boat."

This was known or should have been known to the prosecution before the trial started. The mere statement at this stage of the case, as made by Mr. Imerman came after the jury was completely brainwashed and completely and unfairly infected with the accusation made at the beginning of the case. This was no mere error but one that goes to the very vitals of the case. This misstatement fatally infected the trial.

Berger v. U.S., 295 U.S. 78, 79 L. ed. 1314.

This language has been repeatedly quoted by other cases. (*Viereck v. U.S.,* 318 U.S. 236, 87 L. ed. 736; *People v. Lynch,* 60 Cal. App. 2d 133, 141; *People v. Talley,* 111 Cal. App. 2d 650, 677; *People v. Beale,* 116 Cal. App. 2d 475; *People v. Lyons,* 47 Cal. 2d 311, 318)

The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears. (*Alcorta v. Texas,* 355 U.S. 28, 2 L. ed. 9; *U.S. ex rel Thompson v. Dye,* 221 F. 2d 763; see generally, Anno. 2 L. ed. 2d 1575)

The state may not knowingly use false evidence including false testimony to obtain a tainted conviction, implicit in any concept of ordered liberty does not cease

to apply merely because false testimony goes only to the credibility of the witness. The fact that the jury was informed in the closing argument that the statement made by the prosecutor was untrue, not to rely on it, did not remove the taint of misconduct that fails to accord the defendant fair trial guaranteed by the due process clause of the Fourteenth Amendment. We think, therefore, that any statement made by the prosecutor as to matters that were untrue and which ought to have been known to him to be untrue and corrected immediately fatally infected the fairness of the trial and denied the appellant due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

SECTIONS 1090 AND 1097 OF THE GOVERNMENT CODE ARE UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT, U.S. CONSTITUTION IN FAILING TO DEFINE THE WORDS "FINANCIALLY INTERESTED" AS THE STATUTE WAS AMENDED IN 1963 STATS. 1963, 2172, p. 4559, Sec. 1). THE WORDS ARE WORDS OF LIMITATION.

Prior to 1963, the conflict of interest statute made it a violation for anyone to have a personal interest in a contract and *People v. Darby* upheld the constitutionality of that section as set forth and as defined in the *Darby* case, namely, that "A member . . . violates Government Code Sections 1090, 1097 where a government officer is forbidden to enter into any busi-

ness relation or arrangement with a person that will tend to cause a member to favor such person when any contract proposed by such person is presented for approval."

The Legislature has limited the statutes and required the conflict of interest to be with one who has a *financial interest* in a contract made by them in their official capacity or by any body or board of which they are a member. (Section 1090, 1097 as amended) Thus, by inserting the word *"financial"* before the word *"interest,"* without further definition, the Legislature has now made the section inherently and as construed and applied in this case *uncertain, vague and indefinite.*

The offense is not defined, therefore the language "financial interest" leaves uncertainty and vagueness so that those in public service cannot know what is forbidden or correctly apply the standard. An attempt was made by the trial court to define "financial interest." Since the legislature did not do so the court guessed at its meaning and added words to the statutes that are not clear.

While a reasonably intelligent person can understand the meaning of the word "interest" or the significance of "contract," what constitutes a *"financial interest"* is entirely different and is the subject of many legal controversies in and out of courts. Certainly the meaning of *"financial* interest" cannot be read into any phase of the contract now before the court nor inferred.

In *Connally v. General Construction Co.*, 269 U.S. 385, 391, 70 L. ed. 322, the court held that in order for a penal statute to create a new offense it must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. In that case the court said: "'. . . The dividing line between what is lawful and unlawful can not be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another'."

Also see: *Winters v. New York*, 333 U.S. 507; *Cantwell v. Connecticut*, 310 U.S. 296, 84 L. ed. 1213; *Lanzetta v. New Jersey*, 306 U.S. 451, 83 L. ed. 888; *Ashton v. Kentucky*, 384 U.S. 195; 16 L. ed. (2) 469; 70 L. ed. 322; 96 L. ed. 203.

Where a statute charges an offense and leaves it unprecisely defined it is unconstitutional. *Ashton v. Kentucky*, 384 U.S. 195; *Edwards v. So. Carolina*, 372 U.S. 229; *Cox v. Louisana*, 379 U.S. 536.

IN RE MISCONDUCT OF DEFENSE ATTORNEY AND SURRENDER OF SUBSTANTIAL RIGHTS OF DEFENDANT IN THE TRIAL OF THIS ACTION.

Appellant at various places throughout this brief has indicated how the attorney for appellant in the trial of the action massively contributed to the conviction of appellant in this cause and ignored the Supreme Court's decision in *People v. Iberra,* 60 Cal. (2) 460. A brief recapitulation of the principal matters complained of is as follows:

1. He failed to move for a change of venue (see *People v. Neil Cay,* 37 Cal (2) 792) to protect appellant from the "massive, pervasive and prejudicial publicity that attended his prosecution." (*Sheppard v. Maxwell,* 384 U.S. 333, 352, 3, 16 L. ed. (2) 600)

2. His failure to propose necessary and clarifying instructions as to the mode of making a lease for 25 years by the City Council (Sec. 140E City Charter) (*Miller v. McKinnon,* 20 Cal. (2) 88) or any instructions at all to protect the interests of appellant in the trial below. (*People v. Modesto,* 59 Cal (2) 722, reversible error per se; *People v. Carmen,* 36 Cal (2) 768, 773)

3. His failure to familiarize himself with the facts in the case and resulting from which, in argument and during the trial, he asked leading questions and virtually-testified himself and asserted that Watson loaned Sutton $10,400, which was untrue and which the documentary evidence proved was untrue, and on the con-

trary showed that the loan to Sutton of $10,400 was made by EASCO, Inc., a corporation, a separate legal entity, and not by appellant, and was repaid by Sutton to EASCO, Inc. and not to appellant. This evidence, erroneously developed constitutes the heart of the case. Correct presentation should have resulted in acquittal. The loan by EASCO, Inc. constitutes the only debtor-creditor relationship erroneously alleged to have existed between Watson and Princess Louise Corporation and necessarily was the evidence upon which the conviction of the crime of conflicting interest was based. Counsel thus surrenders basic rights of his client erroneously and prejudicially.

People v. Davis, 48 Cal. (2) 241, 256;
People v. Rogers, 56 Cal. (2) 300.

Since the defendant's counsel surrendered substantial defendant's right his trial became a sham and the judgment of the Court on a mistake of fact is therefore no judgment.

In re Rothrock, 14 Cal. (2) 34, 38.

4. Failure to move in court for sequestration of the jury so as to escape the prejudicial effects of massive damaging publicity. *Sheppard v. Maxwell,* 384 U.S. 333, 352, 353; *Estes v. Texas,* 381 U.S. 532; 14 L. ed. 543; *Rideau v. Louisiana,* 323 U.S. 723, 726; *Irvin v. Dowd,* 366 U.S. 717.

5. Failure to move for a continuance of the trial until after the heatedly contested local City election

took place to avoid the same massive, pervasive and prejudicial publicity in the news media in Los Angeles County. *Sheppard v. Maxwell*, 384 U.S. 333; *Estes v. Texas*. 381 U.S. 352.

TO PROVIDE IN A STATUTE THAT A PERSON WHO IS CONVICTED OF A MISDEMEANOR CARRYING A FINE OF $1,000 CAN BE BARRED FROM PUBLIC OFFICE FOREVER IS CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND IS IN EXCESS OF THE POWER AND JURISDICTION OF THE LEGISLATURE AND THE COURT.

Section 15 of the Penal Code of California defines crime as an act committed or omitted in violation of the law forbidding or commanding it and to which is annexed upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office.
5. **Disqualification to hold and enjoy any office of honor, trust or profit in this State.** (Section 1097 Government Code adds the word "forever." This is forfeiture of a vested right of citizenship one of the privileges and immunities under the 14th Amendment to the U.S. Constitution.

In *Cramp v. Board of Public Instruction,* 368 US 278 7 L ed 2d 285, 82 S Ct. 275 pg. 293, the court said:

> As in *Wieman v. Updegraff,* we are not concerned here with the question "whether an abstract right to public employment exists." 344 US 183, at 192, 97 L ed 216, 222, 73 S Ct. 215. Nor do we question the power of a State to safeguard the public service from disloyalty. *Cf. Slochower v. Board of High Education,* 350 US 551. 100 L ed 692. 76 S Ct 637; *Adler v. Board of Education,* 342 US 485, 86 L ed 517, 72 S Ct 380, 27 ALR2d 472. It is enough for the present case to reaffirm "that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Wieman v. Upegraff, supra* (344 US at 192). "The fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution." *Torcaso v. Watkins,* 367 US 488, at 495, 496, 6 L ed 2d 982, 987, 81 S Ct 1680.

To implement each of the first four punishments listed above, there must be and the legislature has provided a specific *accusation* and trial—*notice* and an opportunity to be heard—as one of the basic elements of due process of law guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States. (*Re Gault,* 387 U.S. 1; 18 L. ed. (2) 527)

In respect to the fourth provision, removal from office, the Legislature has set up a specific procedure in

Government Code Section 3060, formerly Penal Code Section 758. Carrying with it accusation—notice and jury trial to defend. The procedural steps are: (a) Accusation by the grand jury. (Government Code Secs. 3060, 3061, 3062) as to sufficiency of allegations, see *People v. Harby,* 51 Cal. App. 2d 759, 767, 770; *People v. Elliott,* 115 Cal. App. 2d 410, 416; as to requirement of concurrence of 12 of the 19 grand jurors, see *Fitts v. Superior Court,* 6 Cal. 2d 230. (b) Service of copy, with written notice to appear on defendant. (Government Code Sec. 3063) (c) Answer and appearance of defendant. (Government Code Sec. 3064 [hearing and determination in absence of appearance]; 3065. 3066, 3067, 3068 [denials or objections to legal sufficiency of accusation]; 3069 [Judgment of plea of guilty or refusal to answer.]) (d) Trial by jury, in same manner as on trial of an indictment. (Government Code, Sec. 3070) (e) Judgment of removal, entered on minutes with causes of removal stated. (Government Code, Sec. 3072)

Although the procedure has been set out for removal from office, no procedure has been set out for *disqualification* for the fifth ground of punishment, to-wit, *disqualification to hold or enjoy any office of honor, trust or profit in this state.* (*forever*) Sec. 1097, Government Code.

Without such a procedure, one is punished without a trial and this is a violation of due process of law guaranteed by the 14th Amendment to the U.S. Constitution. A conviction on a criminal charge not made is

a denial of due process. (*DeJonge v. Oregon,* 299 U.S. 353, 81 L. ed. 278; *Cole v. Arkansas,* 333 U.S. 199, 201, 92 L. ed. 647)

In *Cole v. Arkansas* the court said "No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. *Re Oliver,* 333 US 257, 273, post, 682, 694, 68 S. Ct. 499, decided today, and cases there cited. If, as the State Supreme Court held, petitioners were charged with a violation of Sec. 1, it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; it is certain that they were not tried for or found guilty of it. It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made. *DeJonge v. Oregon,* 299 US 353, 362, 81 L. ed. 278, 282."

SECTION 13520 DENIES THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND SINGLES OUT PERSONS ARRESTED FOR CRIME FOR WIDER TREATMENT AND PUNISHES THEM WITHOUT TRIAL OR CONVICTION OF CRIMES, SOLELY BECAUSE THEY ARE ARRESTED AND ACCUSED IS REQUIRED IN ORDER TO PUT UP BAIL FOR THEIR RIGHT TO LIBERTY ON BAIL. ALSO, IT IMPOSES A PENALTY ONLY ON PERSONS WHO ARE ARRESTED OR CONVICTED OF CRIME AND NOT UPON THE TAXPAYERS GENERALLY TO PROVIDE FOR ALLEGED "PENALTY ASSESSMENT" TO TRAIN PEACE OFFICERS.

A penal assessment without a trial constitutes a taking of property without due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and denies equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Rinaldi v. Yeager, 384 U.S. 305.

There is no reason why a special class of persons should be singled out to pay for the cost and support and training of their captors. We should send this legislation to Russia and China and other communist countries. It is not for America. At least, we hope not.

Section 13520, Sections 13521, 13522, 13523 of the Penal Code under Aricle 3, entitled Peace Officers' Training Fund and Allocation Therefrom, are uncon-

stitutional. They deny to a person charged with or convicted of or who is presumed to be innocent and a person convicted the equal protection of the law guaranteed by the Fuorteenth Amendment to the Constitution of the United States. They provide a taking of property of an accused or a convicted person without due process and equal protection of law guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States, and the equal protection of the laws.

The courts have assessed upon the arrest of a person and the fixing of a bail a "penalty assessment" beyond the amount of bail required and not to assure the accused's presence but to fix an assessment of money for training police officers. It has also fixed a penalty assessment of $250 in the instant case, upon judgment of conviction and the assessment of the maximum penalty of fine permitted by statute. This same assessment is not put upon the public at large nor any portion of the public except those charged with and arrested for crimes, even though they may be innocent. Pursuant to the constitutional provisions vesting the Legislature with certain authority to fix punishment for crimes, that punishment is fixed in an amount for the punishment and to authorize the assessment a person as a matter of right, is a taking of property without due process of law and is beyond the power of the Legislature and the court to assess.

The equal protection clause of the 14th Amendment to the U.S. Constitution requires non-discriminatory

application and some rationality in the nature of the class singled out.

Rinaldi v. Yeager, 384 U.S. 305, 16 L. ed. (2) 557;
Baystrom v. Herold, 383 U.S.. 107, 111;
Carrington v. Rasl, 380 U.S. 89, 93;
Louisville Gas Co. v. Coleman, 277 U.S. 32;
Royster Guavo Co. v. Virginia, 253 U.S. 412, 415;
Griffin v. Illinois, 35 U.S. 12.

PRAYER

We pray that this court grant certiorari and hold that Mr. Watson was not guilty of conflict of interest, that the judgment be ordered vacated and reversed with instructions to dismiss Count I and order the return of the fine and the penalty assessment to appellant and finally to nullify the order forbidding appellant from holding any public office in the State of California forever.

Respectfully submitted,

MORRIS LAVINE
Attorney for Appellant.

APPENDIX "A"

OPINION OF COURT OF APPEAL

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Crim. No. 16380
Plaintiff and Respondent,	)	S.Ct. # A 228 321
vs.	)	
GEORGE D. WATSON,	)	Feb. 4, 1971
Defendant and Appellant.	)	

APPEAL from judgment and orders of the Superior Court of Los Angeles County. William B. Keene, Judge. Purported appeal from orders dismissed. Judgment affirmed.

Morris Lavine, Welburn Mayock for Appellant.

Thomas C. Lynch and Evelle J. Younger, Attorneys General, William E. James, Assistant Attorney General, James H. Kline, Deputy Attorney General, for Respondent.

George D. Watson was indicted on two charges of conflict of interest (Gov.Code, §§ 1090, 1097), and one

charge of bribery (Pen.Code, § 68). One conflict-of-interest charge was set aside before trial (Pen.Code § 995), an a jury convicted Watson on the two other charges. The trial court ordered a new trial on bribery conviction and then dismissed that charge in furtherance of justice. (Pen.Code, § 1385). On the conviction for conflict of interest, the trial court fined Watson $1,000 (plus a $250 penalty assessment) and forever barred him from holding office in California. Watson appeals.

Government Code section 1090 prohibits a city officer from being financially interested in any contract *made* by a board of which he is a member. Watson was a member of the Board of Harbor Commissioners of the City of Los Angeles from 1961 to 1967. His conviction for conflict of interest was based on his vote as commissioner in 1966 to approve a lease of harbor facilities by the City of Los Angeles to an enterprise which he helped finance.

Watson's briefs teem with contentions, but raise only a few basic questions: (1) whether Government Code section 1090 is constitutional; (2) whether the evidence supported the verdict; (3) whether the jury instructions were adequate; (4) whether the trial court's attempts to cope with publicity surrounding the trial prevented a fair trial; (5) whether the conduct of counsel prevented a fair trial; and (6) whether the sentence was constitutional.

1. Government Code Section 1090

Government Code Section 1090 provides in pertinent part:

> "Members of the Legislature, state, county, special district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . ."

Watson contends this section is vague, uncertain, and indefinite, since the word *financially* is nowhere defined.

We disagree. The constitutional mandate of due process of law only requires that the words used in a statute be sufficiently well known to enable persons within its reach to understand and correctly apply them. (*Lorenson v. Superior Court,* 35 Cal.2d 49, 60.) The word *financially* was added to section 1090 in 1963. Prior to that time this court in *People v. Darby,* 114 Cal.App.2d 412, 427, found the wording of the section sufficiently definite and certain to enable any reasonably intelligent person to understand the meaning of *interested.* The effect of the addition of the word *financially* to the section has been to make it more precise than was formerly the case. It has now been made explicit that the prohibition in the section against conflict of interest is restricted to financial interest, and the possibility that the section might apply to some

other type of interest has been eliminated.[1] Section 1090, therefore, is neither vague nor uncertain, nor indefinite, nor does a prosecution for violation of its terms deny an accused due process of law.

2. Sufficiency of the Evidence

The basic facts are undisputed. In 1964 Watson, a member of the Los Angeles Board of Harbor Commissioners, visited a floating restaurant in Vancouver, British Columbia, and concluded it would be desirable to have a similar restaurant in Los Angeles harbor. In late 1964 or early 1965 he persuaded Leonard Udell of Vancouver, owner of an obsolete passenger liner named S.S. Princess Louise, to visit Los Angeles to explore the possibility of bringing the S.S. Princess Louise to Los Angeles Harbor and converting her into a floating restaurant. On that visit Watson introduced Udell to Charles G. Sutton, manager of a Los Angeles harbor restaurant, and suggested the two of them might put something together. Later Watson went back to Vancouver to look at the S.S. Princess Louise, and Sutton made two trips to Vancouver for the same purpose. On one of these trips Sutton was accompanied by Lawrence Whiteneck, the Chief Harbor Engineer for the Port of Los Angeles.

---

[1]The legislative intent to make the section as precise as possible by adding the word *financially* is apparent from the report entitled "Conflict of Interest" of the Assembly Interim Committee on Government Organization:

"How is the word 'interested' to be interpreted? Presumably this means 'financial interest,' but the language is not explicit. Only contracts and sales are covered by Section 1090, although many other possibilities for conflicts of interest exist. . . . We recommend that Section 1090 of the Government Code be amended to define interest as 'financial interest.'" (California Legislature, Assembly Interim Committee Reports, 1961-1963, Vol. 12, No. 6, p. 9.)

As early as March 1965 Sutton opened negotiations with the Harbor Department to obtain a fifty-year lease on Berth 237 in Los Angeles Harbor as a location for the S.S. Princess Louise. He also sought to buy a liquor license for use on a floating restaurant at that site. On 5 August 1965 Sutton obtained $10,400 from Engineering Associates, an engineering corporation originally owned by Watson but transferred to his wife in 1962 after his appointment to the Board of Harbor Commissioners. The day following Sutton's receipt of this money he put it in an escrow for the purchase of a liquor license for use at Berth 237. In November 1965 Sutton formed the Princess Louise Corporation with himself as president and sole stockholder. He then instructed the escrow company to substitute the name of Princess Louise Corporation for his own as purchaser of the liquor license. In February and March 1966 Princess Louise Corporation made arrangements to acquire other stockholders, buy the S.S. Princess Louise, sell it to the California Small Business Development Company, and lease it back for use as a floating restaurant. Sutton then applied on behalf of Princess Louise Corporation to lease Berth 237 from the City of Los Angeles for occupancy and use by the S.S. Princess Louise as a floating restaurant, and in April 1966 the Board of Harbor Commissioners, including Watson, twice voted in favor of granting the lease. On the day after the second vote the lease was approved by the Los Angeles City Council, and on 10 June 1966 a 25-year lease of Berth 237 to Princess

Louise Corporation was executed by the Board of Harbor Commissioners on behalf of the City of Los Angeles. Thereafter, the Harbor Department spent substantial sums of money to improve Berth 237, and in September 1966 the Princess Louise Corporation opened its bar and restaurant for business. On 30 November 1966 Princess Louise Corporation issued to Charles G. Sutton as payee two checks totalling $10,400, drawn against moneys derived from the operation of the bar and restaurant, and with these checks Sutton purchased a cashier's check for $10,400 payable to Engineering Associates. He then delivered the cashier's check to Watson, who endorsed it "Engineering Associates by G. D. Watson."

The main issue in the case involves the interpretation of these facts. Watson contends the evidence shows only that Sutton owed $10,400 to Engineering Associates at the time Watson voted in favor of the lease, and he argues that the existence of a debt from Sutton to Engineering Associates did not make him financially interested in the lease of Berth 237 to Princess Louise Corporation. With this argument in mind we have examined the record to see whether it contains substantial evidence to support the jury's conclusion that Watson was financially interested in the lease, for if it does, the verdict cannot be set aside on the ground of insufficiency of evidence. (*People v. Newland,* 15 Cal.2d 678, 681.) We conclude that the evidence is sufficient to support a finding that Watson was in fact financially interested in Princess Louise

Corporation at the time he voted in favor of the lease.

Watson's own testimony showed he wrote checks on Engineering Associates' account and considered it to be his corporation. In his initial appearance as a witness he testified on direct examination:

"Q. Mr. Watson, your business or occupation, sir?

A. Business owner.

Q. And the name of the business?

A. Engineering Associates.

Q. And how long — that is a wholly owned corporation; is that correct, sir?

A. Yes.

Q. And it is owned by whom, sir?

A. By my wife and myself.

Q. And how long have you had Engineering Associates, sir?

A. Well, actually, Engineering Associates since 1954. There was another engineering company with another name that was merged into this.

Q. And you have owned the corporation at least since 1954; is that correct?

A. This is correct."

Sutton testified Watson arranged for his loan from Engineering Associates, and Watson himself testified, "I loaned him this money." Sutton told Watson he was buying the liquor license for use on the Princess Louise. Testimony of various city employees suggested

that Watson had been instrumental in expediting approval of the lease and had intervened in its favor on two occasions.

It is also clear that Princess Louise Corporation was created by Sutton as a vehicle to enable him to operate the S.S. Princess Louise as a floating restaurant at Berth 237. In connection with his promotion of this venture Sutton secured a certificate on 30 July 1965 from Bernard J. Caughlin, General Manager of the Port of Los Angeles, which declared:

> "To Whom It May Concern:
>
> "This is to advise that negotiations are being carried on with Mr. Charles G. Sutton for a 50-year lease at Berth 237, Los Angeles Harbor, for the location of the vessel PRINCESS LOUISE, which vessel is to be used as a floating restaurant and cocktail bar, with banquet facilities."

The escrow for the acquisition of the liquor license was in Sutton's name, Sutton paid the money into the escrow, and only later did he substitute Princess Louise Corporation as the buyer of the liquor license.

We must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts. (*People v. Deysher,* 2 Cal.2d 141, 146.) However devious and winding the trail may be which connects the officer with the forbidden contract, if it can be followed and the connection made, a conflict of interest is es-

tablished. (*People v. Darby,* 114 Cal.App.2d 412, 429.) Here the connection is tangible and explicit, and the jury could have concluded that Watson possessed a creditor-debtor relationship with the Princess Louise Corporation when he voted to approve the lease. A creditor-debtor relationship constitutes a prohibited financial interest under section 1090. Directly in point is the case of *Moody v. Shuffleton,* 203 Cal. 100, which held that a conflict of interest existed when a county supervisor approved county contracts made with a business entity whose promissory note and chattel mortgage the supervisor held. In *Moody* the court concluded that the security of the promissory note had been enhanced by the exceution of the contracts with the county. So here, the execution of the lease on Berth 237 enhanced the security of the loan to purchase the liquor license and facilitated its prompt repayment.

We conclude that the evidence of financial interest was sufficient to support the verdict.

3. Instructions to the Jury

The trial court instructed the jury in part:

"The word 'financially interested' as used in Government Code section 1090 means any financial interest which might interfere with a city officer's unqualified devotion to his public duty. The interest may be direct or indirect and includes any monetary or proprietary benefits, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct

> when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual business firm has received."

This instruction was directly taken from instructions approved by this court in *People v. Darby*, 114 Cal.App.2d 412 (Instruction A at p. 433). Watson contends the trial court should have given two "clarifying" instructions also given in *Darby* (Instructions B and C at p. 433), instructions which emphasized that "the disabling interest must be more than a remote, doubtful, speculative, possible, contingent or mental interest, and that in order to convict the accused, it must be found that he stood to gain or lose something." (p. 435.) However, the opinion in *Darby* made clear that Instruction A was a complete and correct statement of the law. The court observed that "[i]t is more than possible that an interest may be contingent or remote and yet influence the member's judgment or vote," and it concluded that the trial court was "generous" to defendant in giving Instructions B and C. (114 Cal. App.2d at p. 435.) Since the "clarifying" instructions in *Darby* set forth a more limited definition of con-

flict of interest than that specified in the statute, it was not erroneous for the trial court at bench to give only the first instruction.

Watson next contends the following two instructions were only partially correct:

> "in a prosecution for conflict of interest, the People do not have to prove fraud, dishonesty, or loss; nor is it a defense in such a prosecution that there was no actual fraud and/or dishonesty or loss."

> "In a prosecution for conflict of interest, the People do not have to prove that the contract is unfair, unjust or inequitable to the city; nor is it a defense in such a prosecution that the contract was fair, just and equitable."

Watson argues the jury should have been allowed to consider whether he was acting in good faith and whether the lease was fair, just, and equitable.

The law is otherwise. The conflict-of-interest statute is founded on the ancient and self-evident principle that no man can faithfully serve two masters, a principle which has always been an essential attribute of every rational system of positive law. (*Stockton Plumbing & Supply Co. v. Wheeler*, 68 Cal.App. 592, 601.) The purpose of the statute is comparable to that of the federal conflict-of-interest statute, which has been described by the United States Supreme Court in the following terms: "The statute is thus directed not only at dishonor, but also at conduct that tempts

dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation." (*United States v. Mississippi Valley Co.*, 364 U.S. 520, 549-550.) In the same tenor are the observations of the California Supreme Court in *Stigall v. City of Taft*, 58 Cal.2d 565, 569: "The instant statutes are concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the city. (See *People v. Darby*, 114 Cal.App.2d 412, 426; 15 Ops.Atty.Gen. 123, 128.) Conceding that no fraud or dishonesty is apparent in the instant case, the object of the enactments is to remove or limit the *possibility* of any personal influence, either directly or indirectly which might bear on an official's decision, as well as to void contracts which are actually obtained through fraud or dishonest conduct. (*Terry v. Bender, supra*, 143 Cal.App.2d 198.)"

This court in *People v. Darby*, 114 Cal.App.2d 412, succinctly summarized the law on the question of in-

tent: "Appellant attacks sections 1090 and 1097 as invalid in that they do not require a specific criminal intent. The absence of such requirement does not apply to crimes based on public policy. To save the state from certain acts universally deemed to be inimical to the public welfare, it is sufficient if the act is forbidden and a penalty is prescribed for its violation. The intent is imputed." (p. 427.) And in applying the principle to the facts before it the court observed: ". . . the evidence adopted by the jury was sufficient to convince them that appellant had an interest in the . . . contract as would tend to prevent his exercise of a jealous concern for the best interests of the school district." (p. 429.)

Considerations of fraud and unfairness were therefore irrelevant (*Millbrae Assn. for Residential Survival v. City of Millbrae,* 262 Cal.App.2d 222, 238), and the instructions on this subject were proper and complete.

Finally, Watson contends the trial court should have instructed the jury on what constitutes a creditor-debtor relationship, since the prosecution relied on the existence of that relationship to establish Watson's financial interest in the lease. But Watson failed to request such an instruction, and in a criminal case the court is only required to instruct on its own motion on general principles of law. Unless specifically requested, the court need not consider instructions on special points of law or special theories which might

apply to particular facts. (*People v. Warren,* 16 Cal. 2d 103, 116-117; Witkin, California Criminal Procedure (1963), § 472.) Here, the existence of a creditor-debtor relationship was not challenged, and absent any tender of that issue the court was not required to define the relationship for the jury.

4. Publicity

In 1967 reporters for the Los Angeles Times, the newspaper of largest general circulation in the area, uncovered evidence which purportedly indicated corruption within the Harbor Department of the City of Los Angeles. Thereafter the Times gave continuous and heavy coverage to its discoveries and to the subsequent indictments and trials of persons connected with or doing business with the Harbor Department. This publicity focused most intensely on a businessman named Keith Smith, who, assertedly, had attempted to bribe several Harbor commissioners. In December 1967, Keith Smith, and Harbor Commissioners Watson, Rundberg, and Starr were indicted by the grand jury at the same time.

a. Gag Order

In Watson's cause the trial court on its own motion ordered the parties, attorneys, and witnesses to refrain from releasing extrajudicial statements relating to the cause except for basic facts about the identity of the defendant, the nature of the charges against him, and

defendant's denial of the charges.[2] Watson did not object to the order at the time it was issued, nor did he object to it prior to entry of judgment by the trial court.

On appeal, Watson urges the invalidity of the gag order because it was entered without prior notice to him and because it unconstitutionally restricted his freedom of speech. He argues that this restriction prejudiced his cause because of the following: the Los Angeles Times was the prime mover in initiating charges against him, and it played a role in his prosecution equivalent to that of a complaining witness. Its motive in so doing was to discredit the Mayor of Los Angeles and his commissioner appointees in order

---

[2]"It appearing to the Court that the within case is one of considerable public interest and may result in substantial publicity, and that there is a reasonable likelihood that dissemination by any means of public communication of extrajudicial statements relating to this case may interfere with a fair trial or otherwise prejudice the due administration of justice, on its own motion the Court makes the following order:

"No party nor attorney herein nor judicial employee nor law enforcement agency or officer associated with this case, nor any agent, employee, independent contractor, business associate or representative of such persons or entities, associaated with this case, nor any witness having appeared herein shall release or authorize the release of any extrajudicial statement relating to this case, for dissemination by any means of public communication, excepting substantive matters as follows:

"1. Factual statements of the Defendant's name, age, residence, occupation and family status.

"2. The circumstances of arrest, namely, the time and place of arrest, and the identity of the investigating and arresting officers and agencies and the length of the investigation.

"3. The nature, substance and text of the charge including a brief description of the offenses charged.

"4. Quotes from or reference without comment to public records of the Court in the case, and to other public records and communications heretofore disseminated to the public.

"5. The scheduling and result of any stage in the judicial proceedings.

"6. A request for assistance in obtaining evidence.

"7. A statement without additional comment that the Defendant denies the charges against him.

"8. The identities of attorneys herein."

to defeat the mayor in his forthcoming campaign for re-election. To achieve its objective the newspaper pumped out a running stream of publicity unfavorable to Watson throughout the pendency of his cause, to which because of the gag order Watson was prevented from making any reply. Watson then states: "Thus, while the newspaper repeatedly commented, Watson and his attorney had to remain silent in reply. This was not equal justice under the law nor freedom of speech or press as far as Watson was concerned." He concludes that this one-sided, adverse publicity was bound to have had a prejudicial effect against his case.

Considered as an abstract proposition, Watson's argument under certain circumstances might carry considerable weight. (Cf. *Mills v. Alabama,* 384 U.S. 214, where the Supreme Court held that statutory restriction on the publication of election news on election day, designed to preserve the fairness and impartiality of the election process, was an unconstitutional interference with freedom of the press.) Serious reservations about the fundamental fairness of such an order might arise in instances where a person under indictment was prevented from exercising his freedom of speech in order to reply to public attacks against him by those who had stimulated his prosecution. (Cf. *In re Sawyer,* 360 U.S. 622, where the Supreme Court set aside disciplinary action imposed on a lawyer who in a public speech during the progress of a trial criticized the fairness and impartiality of the judge before whom the lawyer was appearing as counsel.)

But this is not such a case, and we are not required to consider abstract questions which might arise in some other case but did not arise in this one. Here the gag order was entered by the court in an attempt to insure both parties a fair trial. (Cf. *Sheppard v. Maxwell,* 384 U.S. 333; *Estes v. Texas,* 381 U.S. 532.) A comparable order was upheld in *Hamilton v. Municipal Court,* 270 Cal. App. 2d 797; 33 ALR 3d 1029, cert. den. 396 U.S. 985, where a writ to prohibit a contempt prosecution for violation of the order was denied. And in *Sheppard v. Maxwell,* 384 U.S. 333, 363, the Supreme Court declared that "courts must take steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function."

No objection was made by Watson at the time of the order to lack of prior notice. Hense lack of notice has been waived. (Witkin, 2 California Procedure, p. 1642.) Nor prior to judgment did defendant object to the order itself or move to vacate or modify its terms. It thus appears that defendant accepted and enjoyed the benefit of the order to the extent it prevented the district attorney and prosecution witnesses from making extrajudicial statements about the cause. Having done this he is not in a position to complain for the first time about the unfairness of the order after it has become history. We hold that in the absence of

timely application by defendant to modify or vacate a presumptively valid order entered for his benefit, and in the absence of any specific showing that prejudice resulted to defendant from a denial of that application, defendant is precluded from challenging the validity of the order on appeal.

b. Motion to Sever

The trial court denied Watson's motion to sever the trial of the bribery charge from the conflict-of-interest charge. Watson claims this ruling was erroneous, because the extensive publicity surrounding the bribery charge, which involved Keith Smith (see *Smith v. Superior Court,* 276 Cal. App. 2d 145), so prejudiced the minds of the jurors that it prevented their impartial consideration of the conflict-of-interest charge.

The decision to sever separate offenses for trial rests in the sound discretion of the trial court. (*People v. Kelly,* 203 Cal. 128.) Here, the trial court was acutely aware of the possible prejudicial effects of publicity. Prospective jurors were asked as a group, and individually, whether they had read or heard of the case in the news media and whether they had formed an opinion about it. Many jurors had not heard of the case at all. Others had heard of the case but could remember no details and had formed no opinions. Only one prospect juror had formed an opinion, and he was excused. Watson challenged none of the prospective jurors for cause and had not exhausted his

peremptory challenges when the trial jury was approved and sworn. (Cf. *People v. Miller,* 71 Cal. 2d 459, 473.)

Additionally, the record reveals no evidence of confusion of issues or personalities in the minds of the jurors. The conflict-of-interest charge involved a loan, a liquor license, and Charles G. Sutton; the bribery charge involved stock transactions, the development of harbor land, and Keith Smith. The record indicates that the jury reached its verdict on the conflict-of-interest charge first and then continued to deliberate on the bribery charge. Plainly, the conflict-of-interest charge was not riding the coat-tails of the more publicized bribery charge, and we conclude the trial court did not abuse its discretion in refusing to sever the two charges for trial.

In support of severance Watson also contends that bribery and conflict of interest are totally inconsistent offenses which cannot be joined in the same indictment. We find no merit in this contention. Penal Code section 954 permits an accusatory pleading to charge two or more offenses which are connected together in their commission, or are different statements of the same offense, or are different offenses of the same class of crimes. Joinder was proper here because the charges centered upon and grew out of Watson's conduct as a harbor commissioner. Additionally, the offenses of bribery and conflict of interest are closely related to one another, both having been enacted and defined in 1872 as crimes "Against the Executive

Power of the State" (Pen. Code, Part I, Title 5, bribery in section 68, and conflict of interest in section 71). Although conflict of interest is now defined in Government Code sections 1090 and 1097 (enacted 1943), the two offenses continue to posses common characteristics and attributes, and remain proper subjects for joinder. (Cf. *People v. Thorn,* 138 Cal. App. 714, 734-735.)

c. Motion for Mistrial

Local news media covered Watson's trial with daily accounts of the proceedings. The Los Angeles Times continued its investigation of asserted corruption in the Harbor Department. While the trial was in progress the Mayor of Los Angeles, who had appointed the three indicted harbor commissioners, held a press conference at which he declared that Watson's prosecution was unfair and that the district attorney was plotting to "get" the mayor. The mayor's remarks were extensively reported in the news media, and Watson moved for a mistrial, which was denied. Watson argues the trial court should have granted his motion for a mistrial because of the mayor's comments.

We disagree. First, there is no showing how or in what respect the mayor's comments prejudiced Watson's defense. The mayor defended Watson's conduct and criticized the district attorney and the grand jury for prosecuting him. We agree with the observation of the Attorney General that the comments attributed to the mayor favored Watson's cause by characterizing

his prosecution as political and the charges against him as highly technical. Second, the trial court repeatedly admonished the jury "not to read, listen to or watch anything about this case that may appear in any of the news media." The jury is presumed to have followed the admonitions of the trial court (*People v. Sutic,* 41 Cal. 2d 483, 494), and there is no evidence that it did not. We find no error in the denial of the motion for a mistrial.

5. Conduct of Counsel

Watson argues that in presenting his defense he was denied effective assistance of counsel, contending that his attorney should have moved for a change of venue, for a continuance, for sequestration of the jury; that he should have tendered clarifying instructions; and that he should have argued to the jury that the $10,400 loan was made by Engineering Associates to Sutton and did not involve Watson.

To justify relief on the ground of inadequate representation by counsel, an extreme cause must be disclosed. It must appear that counsel's lack of diligence or competence reduced the trial to a "farce or a sham." (*People v. Ibarra,* 60 Cal. 2d 460. 464.) We see no indication whatever that Watson's trial can be so characterized. First, it is relevant to note that Watson's attorney was selected by him, not appointed by the court (*In re Rose,* 62 Cal. 2d 384, 389), and that Watson made no objection during the course of the trial to his counsel's effectiveness. Second, as in *People v.*

Massie, 66 Cal. 2d 899, 911, Watson's attorney vigorously represented his client, thoroughly cross-examined prosecution witnesses, presented a lengthy defense, urged necessary objections, and acquitted himself well in arguments at bench. As a result of his efforts two of the three charges against Watson were dismissed. The deficiences Watson now assigns to his attorney involve matters of tactical judgment, which is never perfect, and even hindsight may be endlessly debatable. For example, Watson suggests the incompetency of his trial counsel because the latter did not substitute artifice for candor and contend that Watson and Engineering Associates were strangers to onpe another. Had such tactics been followed their effect on judge and jury might well have proved disastrous for defendant's credibility. While conceivably under the tactics now proposed by Watson he might have been acquitted of all charges, it is equally conceivable that under those same tactics he might have been adjudged a felon and sentenced to state prison. We find no semblance of that incompetency of counsel which would render the trial a farce or a sham.

Watson also contends the district attorney committed prejudicial misconduct in making comments in his opening statement which he should have known were untrue. The comments were, (1) the evidence would show Sutton was broke at the time he borrowed money from Watson, and (2) the prosecution would call another harbor commissioner to testify that Watson said he had a percentage of the Princess Louise.

We find nothing prejudicial in these comments. On the first point, evidence at the trial supported an inference that Sutton was, in the vernacular, broke. Sutton testified that he had been out of work for a year and that, although he possessed substantial net worth, his cash position was bad. On the second point, while the district attorney did not call another harbor commissioner to testify what Watson had told him, nothing in the record suggests that at the time of the opening statement the district attorney did not intend to call that witness or knew the latter would not testify. Only moments after the comment the trial court admonished the jury that it was not to consider opening statements of counsel as evidence. And in closing argument the district attorney said it would be unfair for the jury to infer "that Mr. Watson had a piece of that boat."

We conclude that Watson was not denied a fair trial by the conduct of counsel for either defense or prosecution.

6. The Sentence

Government Code section 1097 provides in pertinent part:

> "Every officer or person prohibited by the laws of this State from making or being interested in contracts . . ., who wilfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the state prison for not more

than five years, and is forever disqualified from holding any office in this State."

Under this section the trial court fined Watson $1,000 and forever barred him from holding office in the State of California.

Watson contends the judgment of disqualification from office denied him his constitutional right to due process because he was given no notice and provided with no hearing prior to the entry of the judgment which forever barred him from office. This contention is frivolous. Penal Code section 15 provides that the state may punish by disqualification to hold office; Government Code section 1097 gives notice that disqualification to hold office is a penalty attached to a violation of Government Code section 1090. At the time of sentence Watson was chargeable with knowledge of the penalties provided by law for the offense for which he was prosecuted and convicted. Parenthetically, we note that "forever" need not run in perpetuity, for on rehabilitation Watson can apply to the governor for a pardon. (Cal. Const., Art. V, § 8.)

Penal Code section 13520 creates a Peace Officers' Training Fund, and section 13521 provides that penalty assessments for the benefit of the fund shall be levied and collected in specified amounts by the courts. The judgment imposed a penalty assessment on Watson, which amounted to $250. Watson's contention that these sections deny him equal protection

of law has no merit. (*People v. Norman,* 252 Cal. App. 2d 381, 398-399; *In re Harris,* 69 Cal. 2d 486, 488-489, fn. 3.)

The purported appeals from "orders" and "the order after judgment imposing a fine and penalty assessment" are dismissed. The judgment is affirmed.

FLEMING, J.

We concur:

ROTH, P.J.

HERNDON, J.

PETITION FOR REHEARING

Supreme Court, U.S.
FILED
NOV 6 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-7

GEORGE D. WATSON,
Petitioner,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR REHEARING

MORRIS LAVINE,
215 West Seventh Street
Suite 620
Los Angeles, California 90014
Tel. Area (213) MAdison 7-3241
Attorney for Petitioner.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 8-1782

TOPICAL INDEX

	Page
Petition for rehearing	1
The Facts	2
What are the rights of a defendant in a criminal case?	3
Certificate	7

TABLE OF CASES AND AUTHORITIES CITED

Cases

	Page
Cole v. Arkansas, 333 US 199, 92 L. Ed. 647	2,6
Curtis Publishing Co. V. Butts, 18 L. Ed. 2d 1110	3
Esttes v. Texas, 381 US 586, 14 L. Ed. 2d 546	5
Gideon v. Wainwright, 372 US 335, 9 L. Ed. 2d 799	4
Griffin v. Illinois, 351 US 12, 100 L. Ed. 891	6
In re Gault 18 L. Ed (2)	4
In re Murchison, 349 US 133, 136, 99 L. Ed. 942, 949	4, 6
In re Oliver, 333 US 257, 273, 92 L. Ed. 682	4
New York Times Co. v. Sullivan, 376 US 254, 11 L. Ed. 2d 686	3
Rideau v. Louisiana, 373 US 723, 10 L. Ed. 2d 663	5
Wilner v. Com. on Character and Fitness, 373 US 96, 105, 10 L. Ed. 2d 224, 230	4
Yick Wo v. Hopkins, 118 US 356, 30 L. Ed. 220	6

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-7

GEORGE D. WATSON,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR REHEARING

Your petitioner, George D. Watson, respectfully petitions for rehearing of the order denying his petition for writ of certiorari on October 12, 1971 on the following grounds, to-wit:

1. The Court has apparently overlooked the issue of whether a gag rule imposed on a defendant and his attorney but not upon the newspapers which publicize and scandalize him is invidious treatment denying the defendant an opportunity to receive a fair trial and denies to the defendant the equal protection of the laws under the Fifth and Fourteenth Amendments U.S. Constitution. The newspaper which wrongfully scandalizes the defendant are for its own profit and gain, but not the defendant. This is not equal justice.

2. The Court apparently overlooked the fact that the defendant was tried on one charge which is not an offense against the California law under the undisputed facts of this case and convicted of another offense of which he was not charged and this violated due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. (*Cole v. Arkansas,* 333 U.S. 199).

It is necessary therefore that a rehearing be granted in order that equal justice may be accorded the petitioner under the Fourteenth Amendment to the Constitution of the United States.

THE FACTS

The defendant was a member of the Los Angeles City Harbor Commission. That Comission investigates matters of interest to the City of Los Angeles for the purpose, among others, of recommending business activities in the Los Angeles City Harbor. When a lease is to be entered into by the City involving a lease of five years or less, the Harbor Commission may *make* the lease. But if it is *more* than *five* years, the City Charter of the City of Los Angeles requires that the *City Council make* the lease. The lease in this case for a ship restaurant called the Princess Louise was for *twenty-five years.* Therefore it had to be made by the Los Angeles City Council. Watson was not a member of the City Council and never has been. Therefore there was no way that he could be in conflict of

interest while a member of the Harbor Commission, which required the *making* of the 25 year lease by the City Council.

The widespread publicity of a powerful local newspaper appeared to give Watson's activities for the city harbor a sinister and illegal connotation. The Court order effectively gagged him from replying to the newspaper and television adverse publicity while permitting both the newspaper and television to single him out for invidious though false treatment, and publicity.

In civil cases the Court has held that a public official is *libelled* when the falsehoods are uttered with *actual malice,* that is, with knowledge that the publication was false and with reckless disregard of whether it was false or not. (*New York Times Co. v. Sullivan,* 376 US 254, 11 L. Ed. 2d 686; *Curtis Publishing Co. v. Butts,* 388 US 130, 18 L. Ed. 2d 1094; *Curtis Publishing Co. v. Butts,* 18 L. Ed. 2d 1110)

WHAT ARE THE RIGHTS OF A DEFENDANT IN A CRIMINAL CASE?

Is a person's right to be free from actual malice in false publications which affect his opportunity to receive a fair criminal trial equally as important as the right to litigate civilly for damages if the false publication was made with knowledge that it was false or with reckless disregard of whether it was false or not and for the purpose of affecting a political election?

The gag against Watson and his attorneys was made without due process—without notice or an opportunity to be heard before it was issued (In re *Gault* 18 L. Ed. (2)) While the newspaper was falsely blasting away at the defendant as a member of the Harbor Commission which did not make the lease for the Princess Louise ship restaurant when, as a matter of fact, the lease was *made* by the City Council and not by Watson or the Harbor Commission. Nevertheless, as the jury was not sequestered and was privileged to read the newspaper and listen to television publicizing and blasting this falsehood, defendant and his attorney were gagged by the Court and singled out for this invidious treatment in violation of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment U.S. Constitution and the right of fair trial and a right to a fair hearing to the defendant and a right to his day in court before adverse rulings are made. (Fifth Amendment U.S. Constitution) (*In re Oliver,* 333 US 257, 273, 92 L. Ed. 682; *Gideon v. Wainwright* 372 US 335, 9 L. Ed. 2d 799; *Willner v. Com. on Character and Fitness,* 373 US 96, 105. 10 L. Ed. 2d 224, 230)

A fair trial in a fair tribunal is a basic requirement of due process. (*In re Murchison,* 349 US 133, 136, 99 L. Ed. 942, 949) This was denied appellant.

Newspaper publicity "c l e a r l y illustrates" that news "presented in this case was not one of that judicial serenity and calm to which petitioner was en-

titled." (*Estes v. Texas,* 381 US 586, 14 L. Ed. 2d 546; also see *Rideau v. Louisiana,* 373 US 723, 10 L. Ed. 2d 663)

As Mr. Justice Douglas said and quoted in *Estes v. Texas,* 381 US 541. The nub of the question is the "insidious influences which it puts to work in the administration of justice." Douglas, The Public Trial and the Free Press, 33 Rocky Mountain Law Review 1)

In *Estes v. Texas* the Court said, "It is true that the public has the right to be informed as to what occurs in its courts . . ."

A false report is not informing the public. Appellant accords that right to the press to inform the public truthfully but challenges the right to do so falsely and maliciously to affect an election. Gagging the defendant contrary to the rights accorded all persons under the First Amendment violates due process and equal protection under the Fourteenth Amendment.

This Court has not yet passed upon the constitutionality of the gag rule under the First and Fourteenth Amendments to the Constitution of the United States. The defendant challenges that rule when the press may explode with criticism, falsehoods and vituperation whereas a defendant is gagged into silence. This denies to the defendant rights to which he is entitled under the First and Fourteenth Amendments as well as the Fifth Amendment to fair trial.

Under the British system, the press is equally gagged when the defendant is. Even foreign magazines

which have cases affecting a British trial are banned from entering into the country.

Mr. Justice Black in *In re Murchison,* 349 US 133, 136, 99 L. Ed. 942, 946 said, "Our system of law has always endeavored to prevent even the probability of unfairness." The gag on the defendant and his attorney violates this probability of unfairness. The result of the trial and conviction on a charge not made is demonstrative proof of the unfairness and the singling out for invidious treatment of the defendant. (*Yick Wo v. Hopkins,* 118 US 356, 30 L. Ed. 220; *Griffin v. Illinois,* 351 US 12, 100 L. Ed. 891)

II

The defendant was convicted on a charge not made. He was a member of the Board of Harbor Commissioners which did not make the lease. The lease was made by the City Council. The charge in this case was "conflict of interest" in that he was financially interested in the contract made by the City of Los Angeles. The City of Los Angeles made this lease of twenty-five years pursuant to the City Charter's provision, Section 140E. Watson, like many other persons, made recommendations to the City Council but could not and did not make the twenty-five year lease.

Thus, like *Cole v. Arkansas,* 333 US 199, 92 L. Ed. 647, he was tried on a charge of which he was not guilty and convicted of that charge. The case is identical with *Cole v. Arkansas,* 333 US 199, 92 L. Ed. 647.

Wherefore defendant prays for certiorari and reversal of the judgment below.

MORRIS LAVINE
Attorney for Petitioner

CERTIFICATE

I, Morris Lavine, counsel of record, hereby certify that the foregoing petition is filed in good faith and not for the purpose of delay and on important Constitutional issues raised not determined by this Honorable court. Petitioner believes they are meritorious.

MORRIS LAVINE
Attorney for Petitioner

CERTIORARI
DENIED
N.C.R.